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NINTH ANNUAL REPORT

2003 – 2004

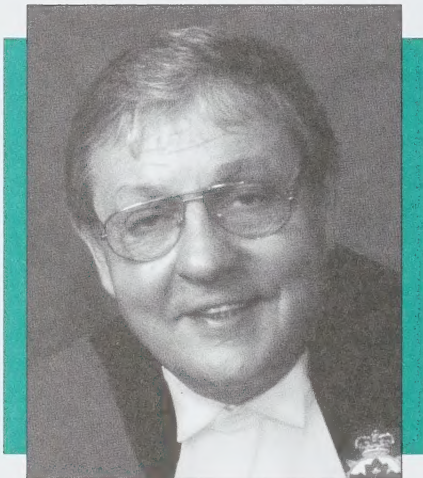
ONTARIO JUDICIAL COUNCIL



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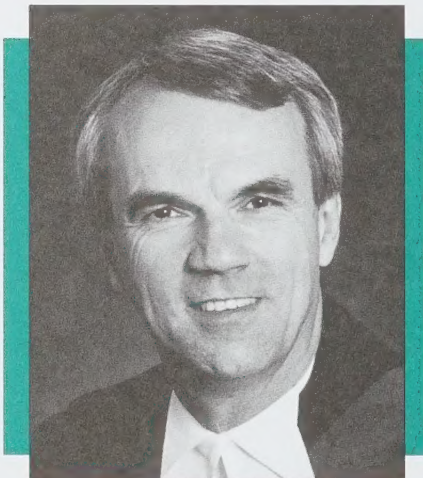
ONTARIO JUDICIAL COUNCIL



The Honourable R. Roy McMurtry

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



The Honourable Brian W. Lennox

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL
CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

January, 2005

To: All Members of the Queen's Park Press Gallery and All Other Media

Dear Sir/Madam:

A copy of the 2003-2004 Annual Report of the Ontario Judicial Council is attached. In this Report, you will find a comprehensive overview of the role of the Ontario Judicial Council as well as a complete summary of activities during the period from April 1, 2003 to March 31, 2004. This report was recently tabled in the Legislature by the Attorney General and can now be released publicly.

The Ontario Judicial Council received 55 complaints in its ninth year of operation, as well as carrying forward 34 complaint files from previous years. Of these 89 complaints, 54 files were closed before March 31, 2004, leaving 35 complaints to be carried over into the tenth year of operation.

Five of the 35 complaint files that were carried over into year 10, involved a referral of the complaint to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox, or to the Chief Justice of the Superior Court of Justice, Heather Smith. The time required for the Chief Justice involved to meet with the judge and to make his or her report to the Review Panel extended beyond March 31st, 2004. Seven of the complaint files were carried over due to unavoidable delays caused by added steps taken in the investigative process (for example, some complainants took a long time to respond to requests for further information). There was also insufficient time before the last meeting of Council in Year 9 to complete the investigation in the 19 files opened near the end of Year 9. The final 2 files that were carried over to Year 10 were two files which had been opened in Year 8, carried over into Year 9 and further carried over into Year 10. Both files had been ordered to a public hearing and hearing dates could not be arranged in Year 9. Both of those complaint files will be reported in Year 10.

An investigation is conducted in all cases by a complaint subcommittee of Council, which is composed of a provincial judge and a community member. The complaint subcommittee reviews the complainant's letter and, where necessary, reviews the transcript and/or the audiotape of the proceedings that took place in court in order to make a fully-informed decision about a complaint. In some instances, further investigation is conducted where warranted. At the conclusion of its investigation, the complaint subcommittee makes a recommendation as to the disposition of the complaint. This recommendation is reviewed by a four member committee, called a review panel. The review panel has representation from the community, the bench and the bar and none of its members have any prior knowledge of the complaint or know the names of those involved. The review panel must agree with and approve the disposition recommended by the complaint subcommittee. In all complaint files dealt with in year eight, the four members of each review panel agreed with the recommended disposition of the complaint by the complaint subcommittee after the review panel examined the complaint and the investigation which had been conducted. A more detailed description of the complaint process may be found at pages 3 and 4 of the Report.

Fifty of the 54 complaint files closed were dismissed by the Judicial Council.

Seventeen of the 50 complaint files dismissed by the Ontario Judicial Council during the period of time covered by this report were found to be outside the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a judge's decision, but who made no allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside the jurisdiction of the Judicial Council.

The remaining 33 of the 50 complaint files that were dismissed by the OJC contained allegations of judicial misconduct including allegations of improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias. The allegations contained in each of these files were investigated by a complaint subcommittee and determined to be unfounded.

The remaining four complaint files that were closed in the ninth year of operation, were referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox, to speak to the judge in question (file nos. 07-027/01, 07-035/02, 07-047/02 and 07-048/02).

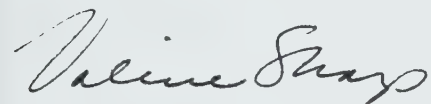
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Besides providing a case summary of every file closed by Council during the year in question, the ninth Annual Report also contains a copy of its brochure which is distributed to the public (Appendix A), a copy of the Judicial Council's "Procedures Document" (Appendix B), a copy of the "Continuing Education Plan" of the Ontario Court of Justice (Appendix C), and a copy of the relevant legislation governing the Ontario Judicial Council (Appendix D).

Pages 6 to 34 of the 2003-2004 Report provide a brief synopsis of the details of each case, indicating the decision of the Judicial Council and the reason why the decision was made.

I regret that this Annual Report was not provided to you in a more timely manner but I appreciate your understanding that its public release is beyond the control of the Judicial Council.

Yours very truly,



VALERIE P. SHARP, LL.B.
Registrar

Enclosure



ONTARIO JUDICIAL COUNCIL

March 31, 2005

The Honourable Michael Bryant
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its ninth year of operation, in accordance with subsection 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from April 1, 2003 to March 31, 2004.

Respectfully submitted,

R. Roy McMurtry
Chief Justice of Ontario

Brian W. Lennox
*Chief Justice
Ontario Court of Justice*



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2003 to March 31, 2004.

The Ontario Judicial Council investigates complaints made by the public against provincially appointed judges and masters. In addition, it approves the education plan for provincial judges on an annual basis and has approved criteria for continuation in office and standards of conduct developed by the Chief Justice of the Ontario Court of Justice. The Judicial Council may make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in the complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative.

The Ontario Judicial Council had jurisdiction over approximately 260 provincially-appointed judges and masters during the period of time covered by this Annual Report.





NINTH OJC ANNUAL REPORT

2003 – 2004

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1. Composition and Terms of Appointment

The Ontario Judicial Council includes:

- ◆ the Chief Justice of Ontario (or designate from the Court of Appeal)
- ◆ the Chief Justice of the Ontario Court of Justice (or designate from the Ontario Court of Justice)
- ◆ the Associate Chief Justice of the Ontario Court of Justice
- ◆ a Regional Senior Judge of the Ontario Court of Justice appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- ◆ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice
- ◆ the Treasurer of The Law Society of Upper Canada or another bencher of the Law Society who is a lawyer, designated by the Treasurer
- ◆ a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society
- ◆ four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

The Chief Justice of Ontario chairs all proceedings dealing with complaints against specific judges, except for the review panel meetings, which are chaired by a provincial judge, designated by the Judicial Council. The Chief Justice of Ontario also chairs meetings held for the purpose of dealing with applications to accommodate a judge's needs resulting from a disability or meetings held to consider the continuation in office of a Chief Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice chairs all other meetings of the Judicial Council.

2. Members – Regular

The membership of the Ontario Judicial Council in its ninth year of operation (April 1, 2003 to March 31, 2004) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

R. Roy McMurtry(Toronto)

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

Brian W. Lennox(Ottawa/Toronto)

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

J. David Wake(Toronto)

REGIONAL SENIOR JUSTICE

Raymond P. Taillon(Lindsay)

TWO JUDGES APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Madam Justice Marjoh Agro.....(Milton)

The Honourable Madam Justice Deborah Livingstone
.....(London)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Vern P. Krishna, Q.C. (to June 26, 2003)(Toronto)

Frank Marrocco, Q.C. (from June 26, 2003).....(Toronto)

LAWYER DESIGNATED BY THE TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Julian Porter, Q.C.(Toronto)

LAWYER DESIGNATED BY THE LAW SOCIETY OF UPPER CANADA

Patricia D. S. Jackson(Toronto)

Community Members:

PAUL HAMMOND(Bracebridge)
President and CEO, Muskoka Transport Ltd.

WILLIAM JAMES(Toronto)
Chair, Inmet Mining

HENRY WETELAINEN(Wabigoon)
Ontario Metis – Aboriginal Association

JOCELYNE COTÉ-O'HARA (from May 28, 2003) .(Toronto)
President, CORA Group

Members – Temporary

Sections 87 and 87.1 of the *Courts of Justice Act* gives the Ontario Judicial Council jurisdiction over complaints made against every person who was a master of the Supreme Court prior to September 1, 1990 and every provincial judge who was assigned to the Provincial Court (Civil Division) prior to September 1, 1990. When the Ontario Judicial Council deals with a complaint against a master or a provincial judge of the former Civil Division, the judge member of the complaint subcommittee is replaced by a temporary member appointed by the Chief Justice of the Superior Court of Justice – either a master or a provincial judge who presides in “Small Claims Court”, as the case may be.

During the period of time covered by this report, the following individuals served as temporary members of the Ontario Judicial Council when dealing with complaints against these provincially-appointed judges and masters: -

MASTERS	JUDGES
• Master Basil T. Clark, Q.C.	• The Honourable Justice M.D. Godfrey
• Master R.B. Linton, Q.C.	
• Master R.B. Peterson	• The Honourable Justice Pamela Thomson

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. The following judge of the Ontario Court of Justice has been

appointed by the Chief Justice of the Ontario Court of Justice to serve as a temporary member of the Ontario Judicial Council when required:

The Honourable Justice Bernard M. Kelly

3. Administrative Information

Separate office space adjacent to the Office of the Chief Justice of the Ontario Court of Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils' office to the Office of the Chief Justice permits both Councils to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff.

Councils' offices are used primarily for meetings of both Councils and their members. Each Council has a separate phone and fax number and its own stationery. Each has a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

In the ninth year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, an assistant registrar (for part of the year) and a secretary:

VALERIE P. SHARP, LL.B. – Registrar
THOMAS GLASSFORD – Assistant Registrar
(on parental leave to May 5, 2003)
ANA BRIGIDO – Acting Assistant Registrar
(to May 5, 2003)
JANICE CHEONG – Secretary

4. Education Plan

The Chief Justice of the Ontario Court of Justice is required, by section 51.10 of the *Courts of Justice Act*, to implement, and make public, a plan for the continuing judicial education of provincial judges and subs. 51.10(1) requires the education plan to be approved by the Judicial Council. During the period of time covered by this Annual Report a continuing education plan was

developed by the Chief Justice in conjunction with the Education Secretariat and the continuing education plan was approved by the Judicial Council. A copy of the continuing education plan for 2003–2004 can be found at Appendix “C”.

5. Communications

The website of the Ontario Judicial Council continues to include information on the Council as well as information about upcoming hearings. Copies of “Reasons for Decision” are posted on the website when released and continue to be available until they can be incorporated into an Annual Report.

The address of the OJC website is: www.ontariocourts.on.ca/.

6. Judicial Appointments Advisory Committee

Since proclamation of amendments to the *Courts of Justice Act* in February, 1995, the Judicial Council no longer has any direct involvement in the appointment of provincial judges to the bench. However, a member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee (J.A.A.C.) as its representative. The Honourable Madam Justice Marjoh Agro was appointed by the OJC to act as its representative on J.A.A.C.

7. The Complaints Procedure

A complaint subcommittee of Judicial Council members, comprised always of a provincially-appointed judicial officer (a judge, other than the Chief Justice of the Ontario Court of Justice, or a master) and a lay member, examines all complaints made to the Council. The governing legislation empowers the complaint subcommittee to dismiss complaints which are either outside the jurisdiction of the Council (i.e., complaints about federally appointed judges, matters for appeal, etc.) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee. A more detailed outline of the Judicial Council’s procedures is included as Appendix “B”.

Once the investigation is completed, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Justice of the Ontario Court of Justice for an informal resolution, refer the complaint to mediation or refer the complaint to the Judicial Council, with or without recommending that it hold a hearing. The decision of the complaint subcommittee must be unanimous. If the complaint subcommittee members cannot agree, the complaint subcommittee shall refer the complaint to the Council to determine what action should be taken.

A mediation process may be established by the Council and only complaints which are appropriate (given the nature of the allegations) will be referred to mediation. The Council must develop criteria to determine which complaints are appropriate to refer to mediation.

The Council (or a review panel thereof), will review the recommended disposition of a complaint (if any) made by a complaint subcommittee and may approve the disposition or replace any decision of the complaint subcommittee if the Council (or review panel), decides the decision was not appropriate. If a complaint has been referred to the Council by the complaint subcommittee, the Council (or a review panel thereof), may dismiss the complaint, refer it to the Chief Justice of the Ontario Court of Justice or a mediator or order that a hearing into the complaint be held. Review panels are composed of two provincial judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a lay member. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant or the subject judge.

Complaint subcommittee members who participated in the screening of the complaint are not to participate in its review by Council or a subsequent hearing. Similarly, review panel members who dealt with a complaint’s review or referral will not participate in a hearing of the complaint, if a hearing is ordered.

By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of six members of Council – two members of the complaint subcommittee and four members of the review panel.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is able to

conduct a hearing into a complaint if a hearing has been ordered. Hearing panels are to be made up of at least two of the remaining six members of Council who have not been involved in the process up to that point. At least one member of a hearing panel is to be a lay member and the Chief Justice of Ontario, or his designate from the Court of Appeal, is to chair the hearing panel.

A hearing into a complaint is public unless the Council determines, in accordance with criteria established under section 51.1(1) of the *Courts of Justice Act*, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, in which case the Council may hold all or part of a hearing in private.

Proceedings, other than hearings to consider complaints against specific judges, are not required to be held in public. The identity of a judge, after a closed hearing, will only be disclosed in exceptional circumstances as determined by the Council. In certain circumstances, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a judge. *The Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints.

After a hearing, the hearing panel of the Council may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been misconduct by the judge, it may impose one or more sanctions or may recommend to the Attorney General that a judge be removed from office.

The sanctions which can be imposed by the Judicial Council for misconduct are as follows:

- ◆ a warning
- ◆ a reprimand
- ◆ an order to the judge to apologize to the complainant or to any other person
- ◆ an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge
- ◆ suspension, with pay, for any period
- ◆ suspension, without pay, but with benefits, for up to thirty days

NB: any combination of the above sanctions may be imposed

- ◆ a recommendation to the Attorney General that the judge be removed from office

NB: this last sanction is not to be combined with any other sanction

The question of compensation of the judge's costs incurred for legal services in the investigation of a complaint and/or hearing into a complaint may be considered by the review panel or by a hearing panel when a hearing into the complaint is held. The Council is empowered to order compensation of costs for legal services (based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services) and the Attorney General is required to pay compensation to the judge in accordance with the recommendation.

The legislative provisions of the *Courts of Justice Act* concerning the Ontario Judicial Council are included as Appendix "D" to this Report.

8. Summary of Complaints

The Ontario Judicial Council received 55 complaints in its ninth year of operation, as well as carrying forward 34 complaint files from previous years. Of these 89 complaints, 54 files were closed before March 31, 2004, leaving 35 complaints to be carried over into the tenth year of operation.

Five of the 35 complaint files that were carried over into year 10, involved a referral of the complaint to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox, or to the Chief Justice of the Superior Court of Justice, Heather Smith. The time required for the Chief Justice involved to meet with the judge and to make his or her report to the Review Panel extended beyond March 31st, 2004. Seven of the complaint files were carried over due to unavoidable delays caused by added steps taken in the investigative process (for example, some complainants took a long time to respond to requests for further information). There was also insufficient time before the last meeting of Council in Year 9 to complete the investigation in the 19 files opened near the end of Year 9. The final 2 files that were carried over to Year 10 were two

files which had been opened in Year 8, carried over into Year 9 and further carried over into Year 10. Both files had been ordered to a public hearing and hearing dates could not be arranged in Year 9. Both of those complaint files will be reported in Year 10.

An investigation was conducted in all cases. The complaint subcommittee reviewed the complainant's letter and, where necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make its determination about the complaint. In some instances, further investigation was conducted where it was warranted. In all cases, the four members of each review panel agreed with the recommended disposition of the complaint by the complaint subcommittee after the review panel examined the complaint and the investigation, which had been conducted.

Fifty of the 54 complaint files closed were dismissed by the Judicial Council.

Seventeen of the 50 complaint files dismissed by the Ontario Judicial Council during the period of time covered by this report were found to be outside the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a judge's decision, but who made no allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside the jurisdiction of the Judicial Council.

The remaining 33 of the 50 complaint files that were dismissed by the OJC contained allegations of judicial misconduct including allegations of improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias. The allegations contained in each of these files were investigated by a complaint subcommittee and determined to be unfounded.

The remaining four complaint files that were closed in the ninth year of operation, had been referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox, to speak to the judge in question (file nos. 07-027/01, 07-035/02, 07-047/02 and 07-048/02).

9. Case Summaries

In all cases that were closed during the year, notice of the Judicial Council's decision, with the reason(s) therefore, was given to the complainant and to the subject judge, in accordance with the judge's instructions on notice (please see page B-26 of the O.J.C. Procedures Document, Appendix "B").

Files are given a two-digit prefix indicating the year of Council's operation in which they were opened, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 09-014/03 was the fourteenth file opened in the ninth year of operation and was opened in calendar year 2003.).

Details of each complaint, with identifying information removed as required by the legislation, follow.

FISCAL YEAR:	99/00	00/01	01/02	02/03	03/04
Opened During Year	59	55	52	49	55
Continued from Previous Year	59	52	44	33	34
Total Files Open During Year	118	107	96	82	89
Closed During Year	66	63	63	48	54
Remaining at Year End	52	44	33	34	35



CASE SUMMARIES

CASE NO. 06-054/00

The complainant attended court as an agent for the defendant in a Small Claims Court matter. The complainant alleged she was the subject of abusive behaviour by the presiding judge. The complainant stated that the judge shouted at her and she felt humiliated because of her accent. The complainant stated that she had attended court for similar matters in the past as part of her occupation and is "accustomed to the way certain judges may get impatient with different parties". However, the complainant advised that this was not a typical experience and she was "shocked and disheartened by the way [the judge]...humiliated me in front of the other people attending".

The complaint subcommittee reviewed the transcript and the audiotape of the proceedings and asked the judge for a response. The judge's response indicated that, because the court proceedings took place almost two years previous to the request for a response, the judge was unable to recall the case and was not able to offer any comment. However, the complaint subcommittee reported that the judge indicated it was not the court's intention to intimidate, demean or humiliate any party appearing in court and if that had been the impression created, the judge sincerely apologized.

The complaint subcommittee reported that it was of the view that this complaint should be dismissed because there was no evidence supporting the complainant's allegations that she was humiliated regarding her accent. The complaint subcommittee also reported that, although the judge did sometimes speak in a loud voice, and the tone of voice did reflect the judge's

displeasure on occasion, the judge's conduct fell short of misconduct and that aspect of the complaint should also be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-027/01

The complainant is a lawyer who stated that he had appeared numerous times before the judge complained about and alleged that "it is not at all unusual for [the judge] to be intemperate and discourteous to counsel, staff, accused, police, and witnesses." The complainant indicated in his complaint that counsel always have "the fear of prejudicing the case of the client appearing before the judge on that date and also fear of ramifications in the future".

The complainant stated that the judge's conduct "poisons the sanctity of the court room. It destroys the appearance of justice. It shakes the public faith in our system of law". The complainant provided copies of numerous transcripts to the Council for their review and was joined by another lawyer in support who also sent in several transcripts as examples of the conduct complained about.

The complaint subcommittee reviewed all the material provided and asked the judge for his response to the complaints. The judge's counsel acknowledged that, on occasion, the judge's remarks may have been insensitive and his tone of voice may have been intemperate, and somewhat acerbic. The judge's counsel also acknowledged that the judge sometimes used colorful language but he did not intend to disparage or do harm

CASE SUMMARIES

and he regretted making certain of the comments that were brought to his attention.

After reviewing all of the material before them, together with the judge's response, the complaint subcommittee recommended that this matter, in conjunction with two other similar complaints received (File Nos. 07-047/02 & 07-048/02), be referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox. The review panel agreed with the complaint subcommittee's recommendation. The Chief Justice met with the judge for the purpose of addressing the concerns expressed by the complainants and reported back to the review panel. In his report, the Chief Justice indicated that he was satisfied that the judge acknowledged that his remarks and conduct were inappropriate and unacceptable and that the judge expressed sincere regret. The Chief Justice recommended that the matter be closed. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 07-034/01

The complainant advised the OJC that he had appeared in court sometime in 1998, and reported that he was refused a Firearms Acquisition Certificate (FAC) by the presiding judge. The complainant alleged that the judge "biased" his case by not allowing him to present himself "as a person with the education of a Conservation Officer", which the complainant felt was an important point. Since the appearance in 1998, the complainant advised that he had written to the Governor General, the Justice

Minister, the Prime Minister and the Queen regarding his complaint. The complainant was asked, both verbally and in writing, to provide the Ontario Judicial Council with the specific court date, time and location of his court appearance so that a transcript of the hearing could be obtained. The complaint subcommittee reported that the requested information was not provided and no further investigation could be conducted. The review panel agreed with the complaint subcommittee that the complaint be dismissed, subject to it being re-opened if the complainant provided the requested information. The complaint subcommittee subsequently reported that they had been given the information sought and were able to order and review a transcript of the hearing. The complaint subcommittee reported that the complainant was not represented by counsel at the hearing and as a result, the judge allowed him leeway in his examination and cross-examination of witnesses and assisted him in presenting evidence. The complaint subcommittee was of the view that the complaint should be dismissed as the hearing was fair and the complainant was given time and opportunity to present his case. The complaint subcommittee reported that there was no judicial misconduct on the judge's part in making the decisions she did in this case and, as a result, the complaint is outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee further reported that the complainant has since written to the Ontario Judicial Council asking that his complaint be withdrawn. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



CASE SUMMARIES

CASE NO. 07-035/02

The complainant was the respondent on an application for increased support payments which had been brought by his wife. The complainant alleged that the judge who heard the application favoured his spouse because of the judge's preconceptions in relation to the complainant's employment and the fact that he made comments in the courtroom regarding the complainant's employment that were "unprofessional" and "very rude".

The complaint subcommittee ordered and reviewed the transcript of the court proceedings and as a result asked the judge in question to respond to the complainant's concerns regarding the comments that he had made in court in relation to the complainant's employment. The judge in question responded to the complaint and clearly apologized for making the inappropriate comments in court and acknowledged that his language was "unacceptable". The complaint subcommittee recommended that the complaint be referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox to speak to the judge regarding it. The review panel agreed with the complaint subcommittee's recommendation. The Chief Justice met with the judge for the purpose of addressing these concerns and reported back to the review panel.

In his report, the Chief Justice indicated he was satisfied that the judge acknowledged that his remarks were inappropriate and that the judge clearly regretted them. At the request of the Chief Justice, the judge wrote a letter of apology, which was forwarded to the review panel for its consideration. The members of the review panel were

satisfied with the report of the Chief Justice and agreed with his recommendation that this matter be closed.

CASE NO. 07-047/02 & 07-048/02

This case involved a Young Offender who appeared in court on a charge of theft. There are two separate complaints (one from the father of one of the accused and the other from a friend of the family who attended court with the father). Both complainants alleged that the trial judge made rude, belittling and demeaning comments about the Young Offender's parents during the court proceedings.

The complaint subcommittee ordered and reviewed the transcript of the court proceedings and reported that the judge did make the comments outlined in the letters of complaint. The complaint subcommittee noted that the judge apologized in court for referring to the Young Offender's parents as "drunks" when the Young Offender's lawyer objected to his use of that term. The complaint subcommittee also noted that the Young Offender's lawyer brought a pre-sentence report to the judge's attention. The complaint subcommittee noted that the pre-sentence report stated that the parents of the accused Young Offender had been sober for ten years. The complaint subcommittee recommended that these complaints, together with the complaints contained in OJC File 07-027/01 be referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox to speak to the judge about them. The review panel agreed with the complaint subcommittee's recommendation.

CASE SUMMARIES

The Chief Justice met with the judge for the purpose of addressing these concerns and reported back to the review panel. In his report, the Chief Justice indicated that he was satisfied that the judge acknowledged that his remarks and conduct were inappropriate and unacceptable and that the judge expressed sincere regret for them. The Chief Justice recommended that the matter be closed. The members of the review panel were satisfied with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 07-050/02

The complainant appeared, without counsel, before the subject judge in Family Court. The complainant alleged that the subject judge shouted at him and was rude to him during the hearing. The complainant was in court to respond to an application for a restraining order that had been brought by his wife.

The complaint subcommittee reviewed the complaint and requested and received a copy of the transcript and audiotape of the proceeding. In addition, the subcommittee requested a response from the judge to address the allegations contained in the letter of complaint. The judge advised that he did not recall the particular incident or the complainant and referred the subcommittee to the transcript for an account of the proceeding. The complaint subcommittee listened to the audiotape and read the transcript and reported to the review panel that the judge did raise his voice when speaking to the complainant, but in their view it was justified in order for the judge to be heard above the yelling

of the complainant. The complaint subcommittee recommended that, although the judge did sometimes speak in a loud voice, the judge's conduct fell short of misconduct and the complaint should be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-008/02

The complainant appeared in court with an agent for the purpose of bringing forward certain motions in a Small Claims Court action. When the complainant's legal representative was unable to respond to the judge's questions in relation to one of the motions, the complainant advised that she replied on her agent's behalf. The complainant alleged that, when she responded, the judge "flew into an unreasonable rage" and became rude and abusive towards her. The complainant also alleged that the judge threatened to call security if the complainant did not leave the court. The complainant asked the Judicial Council to "do justice" to prevent the judge engaging in such actions again, in addition to seeking the Council's advice on whether the judge in question can be sued for discrimination, embarrassment and suffering resulting from the judge's behaviour.

The complaint subcommittee ordered and reviewed the transcript and audiotape of the hearing. In the view of the complaint subcommittee, the presiding judge was assertive at times, but the conduct was not inappropriate and did not equate to judicial misconduct. The review panel asked the subcommittee to do further investigation into this complaint.



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The complaint subcommittee asked the judge to respond to the allegations made. In the response to the complaint subcommittee the judge advised that the only recollection of the complainant the judge had was that of a 'very upset and aggressive woman who interrupted and was very loud' and who came back into the courtroom later in the day and screamed at the judge from the back of the courtroom. The complaint subcommittee again recommended that this complaint be dismissed because in its view the conduct of the judge was not inappropriate and did not amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-010/02

The complainant alleged that the judge who presided over his Family Court proceeding was biased and prejudiced because he relied on the advice of a Family Responsibility Office (F.R.O.) lawyer. The complainant further alleged that the judge refused to permit him to speak in court because he was not represented by a lawyer.

The complaint subcommittee reviewed the complaint and requested and received a copy of the transcript of the proceeding. The complaint subcommittee reported that the lawyer acting for the F.R.O. reviewed the background and nature of the proceedings for the court before evidence was called. The complaint subcommittee advised that this was done to assist both the judge and the complainant, so everyone could be clear what the hearing was about.

The complaint subcommittee further advised that the only time the F.R.O. lawyer offered what might be termed "advice" was at the conclusion of the hearing when the judge was drafting a repayment scheme for the arrears and the F.R.O. lawyer assisted the court in understanding what orders were already in place. The complaint subcommittee noted that the judge explained to the complainant that this advice was helpful to him so the complainant would not be incarcerated in perpetuity if arrears were not paid.

The complaint subcommittee also reported that the transcript revealed that the judge allowed the complainant to give evidence, and to explain his responses to the questions in cross-examination, even though the responses were often wordy and irrelevant. The complaint subcommittee advised that the judge explained to the complainant the issues he should address in his final argument, allowed him to present a final position, only interjected to help the complainant focus his argument, and then gave the complainant an opportunity to respond.

It was the view of the complaint subcommittee that the judge was patient and helpful to the complainant and the transcript did not support the allegations that the complainant was not permitted to speak. The complaint subcommittee further reported that the transcript did not demonstrate any bias or prejudice by the judge in question. The complaint subcommittee recommended that this complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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CASE NO. 08-015/02

The complainant is an agent who appeared on behalf of his client in a Small Claims Court matter. The complainant alleged that the judge told him to sit down in a condescending manner and further commented that, "in twenty-one years [the judge had] not encountered anyone as incompetent as himself". The complainant said that the judge was not impartial when delivering the ruling and the judge was "yelling, screaming and defamatory in all instances". The complainant advised that his client's case was prejudiced by the judge's alleged animosity towards him.

The complaint subcommittee ordered and reviewed the transcript and audiotape of the proceedings. The complaint subcommittee reported that the comments attributed to the judge by the complainant had not been made. The complaint subcommittee also noted that the judge's voice was raised on occasion but, in their view, there was no judicial misconduct. As a result, the complaint subcommittee recommended that this complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-023/02

The complainant was before the court charged with a criminal offence and reported that at her trial in August of 1995 she was not allowed to speak up in her own defence. The complainant also advised that "the deceased's family were very noisy during the trial" and she got a "harsh sentence". The complainant further reported that her incarceration was unpleasant and she was subjected to humiliating treatment while in jail.

The complaint subcommittee reviewed the complaint and requested the transcripts of the proceeding. Court Services advised that, due to the passage of time since the trial (seven years), the records were no longer available and therefore no transcript could be obtained. The complainant was advised that no transcript was available and was asked for further information regarding her complaint. The complaint subcommittee waited six months for a response to this request for further information before making their report to the review panel.

The complaint subcommittee recommended that the complaint be dismissed as no objective evidence could be found to corroborate the allegations that the complainant was not allowed to speak up at her trial. The complaint subcommittee noted from the complainant's letter that she had legal representation at her trial. The complaint subcommittee were of the view that the "harshness" of the sentencing is properly the subject matter of an appeal and not within the jurisdiction of the OJC. Similarly, the complaint subcommittee reported that the unpleasantness of the complainant's incarceration is not within the Ontario Judicial Council's jurisdiction to review. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-029/02

The complainant is the maternal grandfather of a nine year old boy and was in court to seek increased access to his grandson. The complainant's daughter (the mother of the child) suffers from a psychotic disorder and is unable to take care of her



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son. The father of the child, who was originally granted custody of the boy when the parents separated, suffered a debilitating stroke and was unable to take care of his son. As a result, his brother, the child's uncle, was awarded custody. The complaint subcommittee advised that it is evident from the complainant's letters that he despises this man. The complainant's application for increased, unsupervised access to his grandson took the form of a trial which lasted 19 days over the course of almost three years and the complainant's application was ultimately unsuccessful. The complainant alleged that the judge who heard his application was rude, discourteous, refused to listen to tapes submitted into evidence by the complainant and removed evidence from the court file.

The complainant provided copies of the pleadings, and excerpts of the evidence from his application for increased access. The complaint subcommittee ordered and reviewed the transcript of the court proceedings. The complaint subcommittee reported that, in its view, all the material illustrated that the complainant's real issues were not with the judge but with all that has happened in his relationships with his family. The complaint subcommittee reported that the judge in question was patient, courteous and compassionate towards the complainant and that he not only listened to, but considered all the evidence, and did not remove evidence from the court file as the complainant alleged. Further, the complaint subcommittee reported that although the complainant represented himself at times during the lengthy trial, the material confirmed the judge was flexible and fair to the complainant throughout the proceedings.

The complaint subcommittee was of the view that the complainant was simply unhappy with the judge's decision on access. The complaint subcommittee recommended that the complaint be dismissed because in its view there was no evidence of judicial misconduct by the judge. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-032/02

The complainant wrote to the OJC to advise that he was charged with indecent assault and tried and convicted for a crime that he did not commit. The complainant reported that he was "convicted by the actions of a judge, a crown attorney and my own lawyer who conducted a trial on falsified evidence and also on falsified evidence by omission." The complainant went on to make multiple allegations against his lawyer, the crown attorney, the police and the trial judge with regard to an assault peace officer conviction and other unrelated matters that occurred several years previously. The complainant alleged that the judge improperly convicted him of indecent assault, in violation of the Charter of Rights.

After reviewing the complaint and accompanying supporting materials, the complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint other than the complainant's expressed dissatisfaction with the judge's decision. The complaint subcommittee was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in considering the facts and evidence before him and

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that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-033/02

The complainant was in court because she had been charged with assaulting her common law spouse, whom she alleged had also assaulted her. The complainant was not represented by a lawyer at her trial. She complained that her "now ex common law spouse" testified against her and her "assault charge was stayed in the court, even though I wasn't guilty and he [her common law spouse] was found innocent." The complainant alleged that she didn't get a fair trial and was discriminated against because of her gender.

The complaint subcommittee reviewed the complaint and was of the view that there was no judicial misconduct in the exercise of the judge's discretion in staying the complainant's criminal charge. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint. Subsequent to the complainant being advised that her complaint was dismissed by the Judicial

Council, she wrote to advise that she now thought the judge's decision to stay her assault charge was "a good decision on the judge's part because it doesn't show up on my CPIC" (Canadian Police Information Centre).

CASE NO. 08-034/02

The complainant was the respondent in an ongoing Family Court custody and access dispute with her ex-husband. The complainant advised that she had found employment several hundred kilometers from the location where she and her ex-husband lived. The complainant advised that her ex-husband applied for interim custody of their ten-year-old daughter in Family Court as well as an order that the complainant not take the child with her when she moved. The complainant felt that the judge who heard the case made decisions that were detrimental to her family and the decisions were based on "all kinds of accusations against [her], based only on hearsay" which were made by her ex-husband. The complainant advised that she was "allowed to respond and refuted and explained the circumstances" but the judge, who had a "very biased opinion" against her granted the father's application for custody on an interim basis and set a future date to hear further representations from the parties and the Children's Lawyer.

The complaint subcommittee was of the view that this matter is outside the jurisdiction of the Ontario Judicial Council as it concerns a decision made by the judge with which the complainant was not happy and there is no basis for an allegation of judicial misconduct. The complaint subcommittee recommended that the complaint be dismissed as



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it was of the view that there was no judicial misconduct in the exercise of the judge's discretion in making the decisions made with respect to custody and/or access. If errors in law were committed by the judge (and the Ontario Judicial Council makes no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-035/03

The complainant is a respondent in a child protection application brought by the Children's Aid Society. The complainant's letter outlined a list of grievances, all of which concerned decisions made by the judge in court. The complainant felt that her rights were "severely violated" because she felt that her case should be dealt with according to the "family law rules". The complainant also wanted the case transferred to the municipality where she and her daughter live.

The complaint subcommittee reported that the complaint included no allegation of judicial misconduct but related to the judge's decisions. The complaint subcommittee recommended that this complaint be dismissed as it was of the view that there was no judicial misconduct in the exercise of the judge's discretion in making the decisions she made with respect to the application of the Children's Aid Society. If errors in law were committed by the judge (and the Ontario Judicial Council makes no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council.

The complaint subcommittee also noted that the OJC has no power or authority to act on the complainant's request to have the matter transferred from one jurisdiction to another and the complainant was so advised in the letter acknowledging her complaint. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-036/03

The complainant was a party in two Family Court proceedings and an accused in a criminal proceeding in which he was charged with mischief and harassment. The first family proceeding was in December of 2000, the criminal proceeding was in March of 2002 and the second family proceeding was in November of 2002. The complainant advised that the same judge presided at each of the three hearings. The complainant was unhappy that a judge who was involved in his former Family Court matter sat on criminal charges and allegedly used "information gained in the family court matter" against him. The complainant was of the view that the sentence imposed in the criminal proceeding in March of 2002 was excessive and the presiding judge made comments or asked questions that indicated to the complainant that he was influenced by events that happened at the family case conference in December of 2000. Further, the complainant advised that at the second family case conference in November of 2002, an affidavit was produced that included the Probation Order made in March of 2002 after the criminal proceeding. It was the complainant's view that, because the judge was aware of the Probation Order, he pre-determined the family issues and denied the complainant access visits with his child.

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The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts of the criminal proceedings. The complaint subcommittee reported that there were no questions asked, nor any comments made, by the presiding judge at the criminal proceeding that would indicate that the presiding judge had any recollection of this complainant appearing before him in a December 2000 family case conference. In the opinion of the complaint subcommittee, the criminal case was dealt with on the facts provided by the complainant's lawyer on a plea of guilty and submissions made by both the complainant's lawyer and the Crown as to the appropriate disposition. It was noted by the complaint subcommittee that the sentence imposed was within the range suggested by both Crown and defence counsel.

The complaint respecting the November 2002 family case conference having reference to the Probation Order and the allegation that the presiding judge pre-determined the decision made after that conference was, in the opinion of the complaint subcommittee, without foundation. In the complaint subcommittee's view, the essence of the complaint is that the complainant is dissatisfied with the sentence imposed in the criminal proceeding and the denial of access to his child in the subsequent family case conference. The subcommittee noted that documents referred to in the family case conference are public documents and would be known to the presiding justice whether or not he or she had been the presiding justice at the criminal case. It was further noted by the complaint subcommittee that it is not unusual in smaller communities, such as the one in which the complainant

resides, for the same judge to preside in both Criminal and Family Courts and, as such may, from time to time, see the same parties in both courts. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no evidence of judicial misconduct on the part of the judge to substantiate the complainant's allegations. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-037/03

The complainant was a party in a Family Court proceeding. The complainant advised that her 12 year old daughter, who had special needs and whom the complainant had raised alone, was taken from her by court order based on "trumped up charges of neglect" brought by the child's father. The complainant also alleged that she had been denied access to her daughter for the past two years despite her applications to the court. The complainant also stated that her daughter was not receiving the medical services she required while in her father's care and that he continued to "defy the law...with the consent of the judge". The complainant further alleged that the judge was an "avid participant in the ring of abuse being perpetrated (sic)" on her daughter by "not effecting (sic) justice".

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts and audiotapes with respect to the court proceedings. It was the view of the complaint subcommittee that the presiding judge was sympathetic to the application of the complainant,



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who was not represented by counsel, and provided assistance to her. In the complaint subcommittee's opinion, this complainant is dissatisfied with the judge's decisions. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-039/03

The complainant was a party to a Family Court proceeding concerning the amount of support payable to his spouse and children. At the conclusion of the hearing the presiding judge made an order for child support based on guidelines and an order for spousal support. The complainant advised that he had provided information to the judge about his spouse's financial circumstances. The complainant alleged that the judge did not take this evidence into account in making her decision with respect to the amount of spousal support ordered.

The complaint subcommittee reported that the complaint concerned the judge's decision with respect to the issue of the amount of spousal support payable by the complainant and the complaint contained no allegation of judicial

misconduct and related only to the judge's decision. The complaint subcommittee recommended that this complaint be dismissed as it was of the view that there was no judicial misconduct in the exercise of the judge's discretion in making the decision she made with respect to the spousal support that was payable. If errors in law were committed by the judge (and the Ontario Judicial Council makes no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-040/03

A judge imposed a conditional sentence, which involved a period of house arrest and a period of probation, on a man who was convicted of one count of possession of child pornography and several counts of distribution of child pornography. Many members of the public were outraged with the judge's decision and sent in letters of complaint about the judge stating, among other things, that he was unfit to hold judicial office, he didn't take the case seriously and didn't pay attention to the victim impact statements that were submitted by the Crown Attorney.

The subcommittee reported that the only remedy for the dissatisfaction that had been expressed about the judge's sentence was for the Crown to appeal the sentence and, apparently, that had been done. The complaint subcommittee further reported that the complaints disclosed no judicial

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misconduct and that the complaints related to the judge's decision. The complaint subcommittee recommended that these complaints be dismissed as it was of the view that there was no judicial misconduct in the exercise of the judge's discretion in making the decisions he made. If errors in law were committed by the judge (and the Ontario Judicial Council makes no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee further noted that the judge's sentence had, in fact, been appealed by the Crown and the appeal had been dismissed by a panel of judges of the Court of Appeal which ruled that the trial judge did not err in imposing the sentence he had imposed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaints.

CASE NO. 08-041/03

The complainant was a party in a proceeding in Family Court dealing with custody, access and support of his child. The complainant disagreed with the decisions made by the presiding judge as to the manner in which the case would proceed. For example, the complainant advised that his motion for change of venue was not successful and his evidence on his ability to pay child support was not accepted. The complainant further stated that he did not want the particular judge to have anything further to do with his Family Court case.

The complaint subcommittee reported that this complaint is about decisions made by the judge and that these decisions could be appealed if the

judge was incorrect. The complaint subcommittee reported that, in its view, the complaint should be dismissed because it is outside the jurisdiction of the Ontario Judicial Council, there is no basis for any allegation of judicial misconduct and the complainant's letter did not contain any allegations of judicial misconduct. The complaint subcommittee noted that if errors in law were committed by the judge (and the Ontario Judicial Council makes no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-042/03

The complainant was charged with three counts of sexual assault and careless storage of a firearm. The complainant alleged that the judge made a comment at an adjournment proceeding that the complainant had "agreed too (sic) many things". The complainant further alleged that the judge had also stated that he "didn't like the way I was handling my case". The complainant also alleged that the judge had conducted a pre-trial of the charges before the court and had then presided at the trial, which was in clear contravention of "the rules".

After reviewing the complaint, the complaint subcommittee ordered and reviewed the transcript of the adjournment proceeding where the statements had allegedly been made. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support to the allegations made by the complainant. The



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complaint subcommittee further commented that the judge was courteous and respectful of the complainant and had expressed concern that the complainant's new counsel would be available for the trial date. Additionally, the complaint subcommittee noted there were no grounds for a conflict regarding the judge presiding on the trial, as previous appearances were not pre-trials but merely part of the set date procedure. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-043/03

The complainant was the respondent in a Family Court custody and access dispute. An order as to interim custody of the couple's daughter was granted to the complainant's ex-wife when she brought an *ex-parte* motion before the court. The complainant was advised that the order was amended some weeks later to allow him to have access to his daughter and the parties subsequently settled their custody issues. However, the complainant felt that the judge ought not to have made the *ex-parte* order because it was, in the view of the complainant, based upon materials which contained non-truths and half-truths. As a result, the complainant felt that because the judge made the order based upon such information, the judge was biased against the complainant. The complainant also alleged that the *ex-parte* order resulted in him being at a disadvantage in subsequent proceedings.

The complaint subcommittee was of the view that the matter complained of should be dismissed because it was outside the jurisdiction of the

Ontario Judicial Council as it concerned a decision made by the judge and there was no basis for an allegation of judicial misconduct. The complaint subcommittee further reported that the complainant did not appear to understand what an *ex-parte* order is in a Family Court proceeding, how such an order is applied for and how or why such an order is granted. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-044/03

The complainant is the mother of a 52 year old man who was convicted of domestic assault and mischief and who attended in court with her son when he was sentenced. The complainant alleged that the judge did nothing but yell at her son, did not let him or his lawyer speak and made illegal orders for a Criminal Court (the complainant alleged that the judge ordered child support payments, amongst other things).

The complaint subcommittee reviewed the complaint and the transcript and also listened to an audiotape of the court proceeding. The complaint subcommittee recommended that the complaint be dismissed as being without foundation after an examination of the transcript and audiotape failed to support the allegations made against the judge by the complainant. The complaint subcommittee noted that the judge did not yell, and in fact was courteous to the accused and to both Crown and defence counsel. The complaint subcommittee commented that if the sentence imposed is the reason for the complaint, an appeal of the sentence is the proper

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remedy. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-045/03

The complainant was the victim of a domestic assault who had testified at the trial. She stated that the judge who conducted the trial should not be assigned to preside over domestic violence cases because he had described the assault on her as “too trivial” to warrant any period of incarceration and gave her ex-husband an absolute discharge. The complainant stated that she was traumatized by the allegedly dismissive attitude of the trial judge.

The complaint subcommittee reviewed the complaint and the transcript of the trial and sentencing proceedings. After review of the transcripts, the complaint subcommittee reported that it was of the view that there was no judicial misconduct on the part of the trial judge. The complaint subcommittee commented that the judge assessed the credibility of all of the witnesses and made appropriate findings. The complaint subcommittee further noted that the judge did find that there had been an assault, which consisted of a non-consensual touching, but the facts were that it was a very minor assault. The complaint subcommittee commented that the description the judge used was “trivial in nature”, which was a finding entirely consistent with the evidence at the trial in the view of the complaint subcommittee. The complaint subcommittee also viewed the sentence imposed as entirely consistent with the offence which had been committed.

The complaint subcommittee went on to report that the judge explained why he had imposed a discharge and also why he had ordered a peace bond, and that he gave his explanation in a polite and informative manner. The complaint subcommittee recommended that the complaint be dismissed as there was no misconduct on the part of the judge. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-046/03

The complainant is an agent who attended court on behalf of her clients on a Small Claims Court matter. The complainant's clients had proceedings against a “waterproofing” company who performed work on their home and the work could not be guaranteed because the company allegedly was not licensed by the City of Toronto. The complainant advised that before attending court, she had investigated the company in question and obtained a letter from the Manager of Municipal Licensing stating that “all waterproofers are required by law to be licensed”. The complainant alleged that she attempted to present this as evidence to the judge but the judge refused to admit the letter as evidence.

The complaint subcommittee recommended that the complaint be dismissed because it is properly the subject matter of an appeal and, without evidence of judicial misconduct, is outside the jurisdiction the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.



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CASE NO. 08-047/03

The complainant was a party in a Family Court proceeding dealing with issues of interim and permanent custody and interim and permanent support for the children of his former marriage. The complainant advised that the matter was before the courts on a number of occasions and a trial of the matter was ultimately held. The complainant advised that the decisions made by the judge, which dealt with the issues of credibility, stability and capability of paying support, were unfavourable to him. The complainant alleged the judge was biased against him in his decision-making.

The complaint subcommittee reviewed the complaint and commented that there was no basis for an allegation of any judicial impropriety in the complaint. The complaint subcommittee was of the view that the complainant merely disagreed with the decisions reached by the judge. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-048/03

The complainant was the parent of the plaintiff in a Small Claims Court proceeding in which the

defendant failed to appear. The complainant alleged that the judge at the pre-trial was not interested in seeing the plaintiff's documents and told the plaintiff to "shut up and not to speak".

The complaint subcommittee reported that the pre-trial was conducted in the judge's chambers and was not on the record. The complaint subcommittee requested and reviewed a response to the complaint from the judge. In the response, the judge denied that the alleged remarks were made and noted that the ordering of costs against the defendant who did not appear demonstrated the judge's assistance in the matter. Because no objective evidence could be found to verify the complainant's allegations, the complaint subcommittee recommended that the complaint be dismissed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-049/03

The complainant was a defendant in a Criminal Court proceeding, who advised that he, despite having a legal aid certificate, was having difficulty retaining the services of legal counsel. The complainant appeared in court on a number of occasions and alleged that the presiding justice did not listen to his explanations as to why he had not retained counsel. The complainant also alleged that on one occasion when he appeared in court, any attempt on his part to speak was countered by a statement from the judge, "Don't go there". The complainant further alleged that at the end of one court appearance to set a date for trial, the judge "made an order to have me held until I had a court telephone to place a call to the prospective attorney".

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The complaint subcommittee reviewed the complaint and requested and received the transcripts of all of the appearances by the complainant before the judge complained against. The complaint subcommittee reviewed the transcripts received with respect to the ten (10) appearances and adjournments before the trial date was set. In reviewing those transcripts the complaint subcommittee noted that the complainant had two lawyers go on and off the record and a third lawyer go on the record who remained on the record to assist him at trial. The complaint subcommittee was of the view that the judge, at all times, acted properly and was supportive and concerned about the complainant's difficulty with retaining legal counsel. In the subcommittee's opinion, the presiding judge was also concerned that the matter move forward and that the complainant not be inconvenienced by having to re-attend court unnecessarily. The complaint subcommittee advised that there was nothing in the transcripts that supported the complainant's allegation of comments made by the judge ("Don't go there") nor is there anything in the transcripts to suggest that the judge "made an order to have him held until he had used a court telephone to place a call to a prospective attorney". The complaint subcommittee recommended the complaint be dismissed as there was no basis for an allegation of judicial misconduct. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-001/03

The complainant's sons were taken from her custody and placed in a foster home by the

Children's Aid Society. At the end of a hearing in Family Court, the complainant asked for an order for costs and her request was denied by the judge. The complainant is of the view that the order denying costs is "unfair and evil" and the judge had "no logical reasons" to deny her request. The complainant further stated that because she had been denied costs, she and her sons have no money for medication and food and she has suffered financial and emotional distress.

The complaint subcommittee reviewed the complaint and noted that the complaint arose from the exercise of the judge's discretion as to whether to award costs. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no allegation or evidence of any judicial misconduct in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 09-004/03

The complainant was in Family Court as the respondent on a motion brought by her former husband to rescind her access to the couple's children. The complainant alleged that the judge who heard the motion improperly presided over the trial after dealing with case conferences and other motions contrary to the Rules of Civil



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Procedure. The complainant also alleged that the judge improperly allowed allegations of assault to be used in a civil proceeding contrary to the Charter of Rights. The complainant disagreed with the findings made by the Family Court judge that resulted in the order which had been sought by her former husband.

The complaint subcommittee reviewed the complaint and requested and reviewed the entire court record, including the affidavit materials, in this Family Court matter. The transcript of the final court proceeding was also requested and reviewed by the complaint subcommittee. The complaint subcommittee noted that the Rules of Civil Procedure do not apply to matters in the Ontario Court of Justice, Family Division, but that the Family Law Rules govern Family Court proceedings. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion to consider the motions and affidavit material and issue the orders being sought by the applicant. The complaint subcommittee noted that a judge on a case conference may make an order on a temporary or final basis, providing proper notice was given, and that there is no requirement to put the matter over to another judge for trial. The complaint subcommittee further noted that it is not a breach of any Charter rights for evidence of assault allegations to be received and considered by the presiding judge. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the

recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-005/03

The complainant, who described himself as a "Mediator, not a lawyer", advised that he had appeared before the judge on two occasions as a self-represented litigant in Small Claims Court. The complainant alleged that after one of his court appearances, he had requested to meet with the judge in Chambers and during their conversation discovered that a former next-door neighbour of the complainant's, who was a judge in another jurisdiction, was also an acquaintance of the judge. The complainant advised that he recently attended at the court to meet again with the judge thinking that the judge would be able to assist his sister, who is a lawyer and who was relocating to Ontario, find a position in the legal field. The complainant allegedly asked the court clerk to meet with the judge in chambers on a personal matter. The complainant stated in his letter to the Council that when he went back into chambers, the judge "went into a tantrum much like my ten year old son, embarrassing everyone in the vicinity".

The complaint subcommittee reviewed the complaint and requested and reviewed a response from the Trial Scheduling Clerk, who was the individual the complainant spoke to on the date in question, as well as two responses from the judge; one of which also included statements from other members of the court staff. In her response, the Trial Scheduling Clerk indicated that the complainant identified himself to her as a friend and neighbour of someone the judge knew.

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As she was not aware of the fact that he had previously been a litigant before the judge, she had no reason to doubt him and therefore allowed the complainant in to meet with the judge. The clerk indicated in her letter, that the judge, upon seeing the complainant, immediately and repeatedly asked him to leave, which he eventually did.

Court staff from the same court location also provided statements that, over the years, the complainant has appeared at their court location and asked court staff to do typing for him, misled staff about his relationships with people in the court office, misrepresented himself as an employee of the Ministry of the Attorney General who “oversees” courts and misrepresented himself as a lawyer. The complaint subcommittee reported that various court staff members described the complainant as having a “soft yet threatening manner” and someone who is “not easily daunted”. The complaint subcommittee recommended that the complaint be dismissed as being without foundation after reviewing statements of the judge and the court staff regarding their experiences with the complainant over the years and with regard to this most recent incident. The review panel agreed with the complaint subcommittee’s recommendation to dismiss the complaint.

CASE NO. 09–006/03

The complainant represented himself on a charge of breach of probation. The complainant was acquitted at the end of the trial. The complainant alleged that the judge’s comments while giving his “Reasons for Judgement” were “unacceptable, rude, hurtful, degrading, childish and juvenile”.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the court proceeding. It was the view of the complaint subcommittee that the presiding judge was patient and allowed the complainant every opportunity to tell his story. The complaint subcommittee noted that the judge, in their opinion very fairly, gave reasons to explain to the complainant that he is “his own worst enemy” and in their view was not rude or demeaning. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09–007/03

The complainant, who was not represented by legal counsel, was charged with multiple offences including two charges of committing perjury with intent to mislead, two charges of assault police and one charge of resisting a peace officer. The complainant had appeared before the trial judge for pre-trial motions and various trial management conferences and had made a number of allegations to the judge about his inability to prepare his defence without a lawyer and while in custody. The complainant alleged that, while in segregation at a local detention center, his copy of the Criminal Code (allegedly provided to him by another judge) was taken from him as well as the disclosure material that had been provided to him by the Crown’s office. The judge who is the subject of this complaint ordered that the complainant be provided with photocopies of pages of the Criminal Code relevant to his charges and sought



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information from the complainant as to the names and addresses of witnesses he wanted to be subpoenaed so that court staff could prepare the subpoenas on his behalf and the police directed to serve them. The complainant alleges that the judge “assisted” him with his defence against his will and provided unsolicited legal advice.

The complaint subcommittee ordered and reviewed a copy of the transcript and audiotape of some of the various court proceedings. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the judge’s attempts to ensure that the complainant had the tools he required to make a full answer and defence to the charges he was facing, given that the complainant refused to have a lawyer assist him. The complaint subcommittee noted that the judge went to great pains to explain the process to the complainant and was eminently patient and fair in all the circumstances. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 09–008/03

The complainant is a respondent in a child protection application made by the Children’s Aid Society. The complainant alleged that the judge made a statement in court that he had seen information on a computer that the complainant was calling the police on a daily basis. The complainant further alleged that the judge had said that the complainant would harm the child who is the subject of the proceeding and that the child was in need of protection. The complainant was

not in court when these statements were allegedly made by the judge but had been advised of them by his girlfriend, the mother of the child in need of protection, who was in attendance.

The complaint subcommittee reviewed the complaint and requested the transcript of the proceeding. Court Services confirmed that the proceeding referred to by the complainant was a “trial management conference” and was not on the record and therefore no transcript was available. The complaint subcommittee requested and reviewed a response to the complaint from the subject judge. In his response, the judge denied having looked at a computer to determine how many times the complainant had called the police and advised that he would not have had access to such information in any case. The complaint subcommittee noted that the fact that the child needed protection from the complainant was the basic premise of the proceedings and the Children’s Aid Society’s position in the case. The complaint subcommittee also noted that the complainant was not in attendance at the proceeding and was filing the complaint based on information related to him by his girlfriend, the mother the child, whose mental health was a factor in the proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09–009/03

The complainant was a respondent in a child protection application made by the Children’s

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Aid Society. The complainant reported that he had been advised by others who were present in the courtroom that the judge in question said things about him that were untrue. The complainant advised that the judge had allegedly said that the complainant was a “criminal” and a “violent person and dangerous”. The complainant also alleged that the judge said that he was not the child’s biological father and that he’d raped the child’s mother and a restraining order against the complainant was required to protect the child’s mother. The complainant further alleged that the judge was trying to “frame him”.

The complaint subcommittee reviewed the complaint and requested and reviewed a transcript of the court proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed as the transcript did not contain the remarks attributed to the judge. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-011/03

The complainant was an accused in a criminal proceeding wherein he was charged with two counts of possession under \$5000.00. After the trial, which took two days, the complainant was convicted and subsequently sentenced. The complainant wrote to the Judicial Council and alleged that members of the local police force collaborated with members of the local Crown Attorney’s office to prosecute him with prejudice and malice and they had “taken control over the judge’s decision and, the court, itself.”

The complainant also alleged that disclosure of the Crown’s case and evidence against him had been delayed. The complainant advised that he had filed a complaint with the Ontario Police Commission and the matter had been outstanding for approximately two years. The complainant further stated that the judge in question convicted him solely on circumstantial evidence and that the conviction was appealed. The complainant alleged that the judge in question allowed the Police and/or Crown, to influence his judgment instead of the evidence or lack of evidence presented to him in court.

The complaint subcommittee ordered and reviewed a copy of the trial transcript and recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge’s discretion in considering and weighing the evidence and that the decisions made were within the judge’s jurisdiction. If errors in law were committed by the judge (and the Judicial Council makes no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 09-012/03

The complainant, who was not a party to the proceedings but rather the mother of one of the parties who was involved in a Family Court matter dealing with the custody of and access to a child, complained that the process took entirely too



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long and there were a number of days when she attended court with her son, the father of the child in issue, where little was accomplished. The matter was set for trial and during the trial the judge advised the lawyers for the parties that joint custody was an unlikely outcome and they should attempt to resolve the matter. The complainant advised that the parties ultimately did resolve the matter, to her dissatisfaction. The complainant felt that the judge should have allowed the trial to continue and made a decision after hearing all of the evidence.

The complaint subcommittee reviewed the complaint and was of the view that the complainant was dissatisfied with the preliminary opinion given by the judge in a Family Court proceeding and also dissatisfied with the role of the judge during the proceedings. The complaint subcommittee was of the view that the judge was exercising her role as a judge in Family Court in an appropriate manner by expressing her assessment of the evidence heard thus far and expressing her opinion on the likely success of the positions being put forward.

The Council noted that the parties, with the benefit of their counsel, entered into Minutes of Settlement and the matter was resolved. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's judicial discretion in providing her preliminary opinion of the evidence before her. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-013/03

The complainant was a defendant in a Criminal Court proceeding where she was charged with leaving the scene of an accident under the Criminal Code. After the trial before the Ontario Court of Justice, she was convicted of the offence. The complainant maintained that the Court should have accepted her explanation and acquitted her.

The complaint subcommittee recommended that the complaint be dismissed as the complaint was about the decision made by the judge and is outside the jurisdiction of the Judicial Council. The complaint subcommittee was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in convicting the complainant and no allegations of misconduct were contained in the letter of complaint. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-014/03

The complainant and his spouse are parties to a Family Court proceeding involving the Children's Aid Society (the C.A.S.). The complainant is apparently unhappy with the decision reached by the trial judge. The complainant reported that the lawyer for the C.A.S. accused him of calling his wife a "nut bar" (which the complainant denied). The complainant alleged

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that the judge seemed to think it was true because of the decision he made at the end of the trial and the complainant is concerned that his wife's health will deteriorate and he will somehow be blamed for causing it.

The complaint subcommittee reviewed the complaint and recommended that the complaint be dismissed. The complaint subcommittee is of the view that the complaint concerns a judge's decision and lacks a basis for an allegation of judicial misconduct. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 09-015/03

The complainant advised that his problems with the criminal justice system began when his wife became romantically involved with someone who had been an employee. The complainant and his (now ex-) wife owned a mining company for which the employee had worked. The complainant reported that during an incident when all three were in the ex-employee's home, the complainant was assaulted by the ex-employee, who was charged with assault causing bodily harm. At the trial in 1993, the accused (ex-employee) pleaded guilty to the lesser offence of assault and the presiding judge accepted a joint submission for a suspended sentence and probation. The complainant was not in court on the day of the plea, and was not, apparently,

invited to provide a Victim Impact Statement. The complainant advised that he felt the Crown was thereby negligent and that the presiding judge condoned the Crown's improprieties.

The complainant divorced his wife and was convicted in another city and by another judge, of offences involving stalking his ex-spouse. The complainant reported that part of the sentence imposed on him were conditions to stay away from his ex-wife and her residence, which by this time, was also the residence of the ex-employee. The complainant advised that he breached this term of his probation order in 1997 and, as a consequence, the ex-employee was charged with a weapons offence when he brandished a rifle in an attempt to get the complainant off his property. The complainant reported that the ex-employee appeared before the same judge before whom he'd appeared in 1993 and pleaded guilty to careless use of a firearm. The Crown Attorney and defence counsel presented the judge with a joint submission for a suspended sentence and that joint submission was accepted by the judge. The complainant alleged that the court did not act properly and he complained that both the judge and the Crown Attorney were biased in favour of the accused, and against him.

The complainant expressed his displeasure with the way proceedings against the former employee ended and with the sentences imposed by the judge in question. The complainant was facing more criminal charges in the same jurisdiction and wanted his case moved to another city, to avoid the judge, whom he claimed is



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biased against him. The complainant provided transcripts of his various court appearances and had also sent them to other bodies, like the Ombudsman and the Attorney General, to whom he had also complained.

The complaint subcommittee reviewed the complaint material and the transcripts. The complaint subcommittee noted that the Ontario Judicial Council has no jurisdiction to intervene in moving a court matter from one city to another. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after an examination of the transcripts of record did not support the allegations of bias made by the complainant. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-016/03

The complainant was the plaintiff in Small Claims court, where he was seeking financial restitution from a major electronics manufacturer / retailer for the loss of use of his newly purchased computer. The complainant was suing the manufacturer / retailer because he claimed it had installed allegedly defective software which rendered his new computer useless. The trial judge did not agree with the plaintiff's contentions and dismissed his claim. The judge also ordered the complainant to pay the costs of the defendant. The complainant alleged that "the judge's conduct and decision is a breach of the law, scientific facts, and the rules of ethics, common sense and decency".

The complaint subcommittee reviewed the complaint and recommended that the complaint be dismissed. In its view, there was no judicial misconduct evident in the exercise of the judge's discretion in considering and weighing the merits of the case and the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-017/03

The complainant was the unsuccessful party in an application made to the court for custody of her daughter. She alleged that the trial judge made an order without her having counsel and that the trial judge had also presided over the settlement conference.

The complaint subcommittee reviewed the complaint and recommended that the complaint be dismissed. The complaint subcommittee noted that a party need not be represented by counsel in a domestic proceeding and there is no obligation on the court to provide counsel. The complaint subcommittee noted that in Family Court, the same judge is involved in all pre-trial and case management conferences and there is nothing improper in the judge's involvement prior to the trial. In the complaint subcommittee's view, any decisions on the merits or on procedural issues made by the judge are matters for appeal.

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If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-018/03

The complainant was the unsuccessful plaintiff in a Small Claims Court law suit. The complainant was seeking damages from a College in Ontario for misrepresentation and negligence. The complainant alleged that the trial judge, who dismissed his lawsuit, was biased as "evidenced" by his obvious "rapport" with the opposing lawyer who appeared on behalf of the defendant / college. The complainant advised that this "rapport" was evident because whenever the opposing lawyer asked for "date changes for court dates, this was granted quickly and easily and also to the detriment of [the complainant's] case".

The complaint subcommittee reviewed the complaint and requested a copy of the transcript of the proceeding. Court Services advised the Council that no court reporter was present at the hearing and therefore no transcript could be obtained. The complaint subcommittee recommended that the complaint be dismissed, as the complainant's allegation that the judge was biased in favour of the defendant's counsel was not substantiated simply because an adjournment request was granted. The complaint subcommittee was of the view that the allegation about the judge's "rapport" with defence counsel

was too vague in and of itself to identify and support allegations of bias and misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-019/03

The complainant was an accused before the courts who requested that his trial be held in French. The complainant alleged that the trial judge could not speak French well enough to allow him to present his defence. The complainant also complained that disclosure of evidence from the Crown was provided to him only in English.

The complaint subcommittee (both of whose members are bilingual) reviewed the complaint and requested and reviewed the audiotape of the proceedings. The complaint subcommittee noted that the proceeding was conducted in French, and, in their opinion, the judge's linguistic abilities in French were excellent. In the complaint subcommittee's view, the audiotape attested to repeated efforts of the judge to provide the complainant, who was self-represented, with opportunities to question witnesses and present his defence and to understand the judicial process. The complaint subcommittee also noted that the complainant failed to indicate any misunderstanding or miscomprehension during the trial. The complaint subcommittee recommended that the complaint be dismissed as being without foundation after an examination of the audiotape offered no support to the allegations made by the complainant. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.



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CASE NO. 09-020/03

The complainant was before the criminal courts and convicted of two counts of assault. He alleged that the trial judge showed prejudice by his comment on sentencing that the complainant was not to be believed and was “a liar”.

The complaint subcommittee reviewed the complaint and the transcript of the court proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after an examination of the transcript of record revealed that the remarks attributed to the judge by the complainant had not been made. The complaint subcommittee noted that the trial judge is entitled to make a credibility finding and did so in the proper manner and that no inappropriate language was used. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-021/03

The complainant advised that her husband went to Family Court to gain more access to his son from a previous marriage. The complainant’s husband also wanted to change the pick-up arrangement so that his son could be picked up from school instead of his mother’s home in order to avoid confrontations with his ex-wife that were resulting in stress for all parties. The complainant alleged that at a pre-trial proceeding, the presiding judge indicated he would be inclined to grant this variance in access but was unable to do so because the ex-wife’s lawyer declared they had not had proper notice of the motion to vary the previous access order. The

complainant alleged that the presiding judge stated that if proper notice were afforded to the ex-wife, he would be inclined to grant the variance at the next court appearance. The complainant advised that at the next appearance, several months later, the motion to vary the access was before the courts and proper notice had been provided to the ex-wife and her lawyer. The complainant advised that, after hearing the motion and argument from the child’s mother, the judge dismissed the motion and awarded costs against the father. The complainant asserts that the motion was only brought before the court because the judge had given them “legal advice” to bring the motion.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts of both proceedings. The complaint subcommittee noted that the transcripts indicated extensive discussion of the facts and that the proceedings were made complex and confusing by both party’s counsel. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge’s discretion in considering the facts, weighing the submissions and in making the decision to dismiss the motion. The complaint subcommittee further noted that the judge made his ruling after full examination and consideration of the materials and information submitted by both sides. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

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CASE NO. 09-022/03

The complainant's son was sentenced by the judge in Youth Court. The complainant advised that her son had no involvement with the courts nor any record for juvenile delinquency in his past yet was incarcerated for a year for a first offence. The complainant stated that she felt this sentence was "Harsh and Cruel for a first offender" and the judge must have been "incompetent to pass such a harsh sentence".

The complaint subcommittee reviewed the complaint and recommended to the review panel that the complaint be dismissed. The complaint subcommittee was of the view that the complaint concerned the decision of the judge to impose the sentence he did, which is a matter for appeal. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-024/03

The complainant is the maternal grandmother of two children who were given up by their mother to the care of the Children's Aid Society. The complainant was concerned that her daughter, the mother of the children, would not get a fair trial when issues of child protection, custody and access (supervised or unsupervised) were determined. The complainant stated that she and her daughter believed that the judge had already made up his mind because of comments

he allegedly made during a trial management conference the daughter attended.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the trial management conference. The complaint subcommittee noted that all parties involved in the proceeding were represented by legal counsel, with the exception of the biological father. In the opinion of the complaint subcommittee, the presiding judge was acting in the capacity of a trial management judge and was directing counsel as to the materials required at trial to support their various positions. The complaint subcommittee advised that the judge expressed the opinion that the Children's Aid Society had a very strong case and that the mother would need to establish an equally strong case to support her position. The complaint subcommittee noted that the judge made suggestions as to how the matter might be resolved in the best interests of the children and the mother and insisted that the parties identify the issues that could be settled prior to trial. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was nothing to support an allegation of judicial misconduct and the transcript did not support the allegations made against the judge and specific comments that the judge was purported to have made. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint.

CASE NO. 09-028/03

The complainant is the grandmother of children involved in an on-going custody and access dispute. The complainant alleged that the judge hearing



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the case made bad decisions, so the judge should not be involved in continuing litigation.

The complaint subcommittee reviewed the complaint and transcript provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making the decisions that he made. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee noted that the fact that one of the judge's decisions were appealed and that the Appeal Court indicated some errors in law were made, is not the same as a finding of judicial misconduct. The complaint subcommittee also noted that continuing litigation may involve the same trial judge, but that the judge cannot be precluded from hearing the case. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint. The review panel expressed concern for the safety of the children involved in this case due to allegations contained in the complainant's letters and felt a statutory obligation pursuant to the *Child and Family Services Act* to send copies of the complaint letters to the Children's Aid Society for the region in which the complainant resided.

CASE NO. 09-032/03

The complainant advised that he was a party in a Family Court proceeding. The complainant also

advised that he was charged with impaired operation of a motor vehicle and his driving privileges were suspended for three months commencing on December 30th, 2002. The complainant further advised that he was required to attend a Family Court proceeding in February, 2003 to deal with a review of the amount of support he was paying as well as a review of the custody and access arrangements regarding his two children. The complainant advised that he was unable to attend court because of transportation difficulties. The complainant advised that the matter was adjourned to May, 2003 at which time an order was made, again in his absence, varying his access to his children. The complainant advised that he disagreed with the judge's decision and wished to have the matter re-heard.

Some time after the completion of the Family Court matter in May, 2003, the complainant was in Criminal Court to plead guilty to the impaired driving charge. The complainant advised that the judge who dealt with his Family Court matter was also the judge in Criminal Court. The complainant advised that he was given eighteen months probation and was restricted in his consumption of alcohol during the period of probation. The complainant stated that the sentence was "unreasonably harsh...and unfair" and also interfered with his access to his children. The complainant stated that the judge should have disqualified herself from the Criminal Court matter due to the fact that she had been the judge to make decisions on his Family Court matters some months before.

The complaint subcommittee reviewed the complaint and recommended that it be dismissed.

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The members of the complaint subcommittee were of the view that there was no judicial misconduct in the judge presiding over both the family and criminal matters or in making the decisions she made. The complaint subcommittee also noted that the complainant hadn't attended in court during the course of the Family Court action and it was unlikely the judge made any connection between the two court matters in any event. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-033/03

The complainant was the respondent in a Family Court proceeding dealing with the issue of responsibility for and obligation to pay maintenance for his daughter. The complainant was of the view that since his daughter is 20 years of age, he should have no obligations to pay support for her benefit. An interim order was made for the support of the child, which in the complainant's view, was made without consideration of his income and the fact that he had spousal support obligations and child support obligations for two other children who reside with him. In addition, the complainant re-attended before the judge at a trial management conference hearing at which time a further order was made, stating that if the outstanding child support was not paid the trial would proceed on an uncontested basis.

The members of the complaint subcommittee reviewed the complaint and reported it was of the opinion that the complainant was dissatisfied with the judge's decisions to award support to his 20 year old daughter and also disagreed with the

quantum of support ordered and the possibility of the matter proceeding to trial on an uncontested basis. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making the orders that he made. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-035/03

The complainant, who was being sued for libel in Small Claims Court, alleged that when the matter was originally heard and reviewed, the presiding judge (who is not the subject of this complaint) indicated to the applicant that his application was frivolous and that the judge would be dismissing the case. In response, the applicant indicated that he was simply following the advice of his legal counsel in filing the application. The judge adjourned the matter, rather than dismissing it, in order to hear submissions from the applicant's lawyer, who was not in attendance at that appearance.

When the matter returned, the original judge was ill and the replacement judge did not dismiss the case but allowed the applicant to proceed to trial. The complainant advised that the applicant was also suing another person for libel and that respondent filed a counter-suit. The complainant



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further advised that, although the applicant in both libel suits never paid the court fees to bring the matter to trial, the counter-suit brought all the cases before the court. The complainant alleged that the presiding judge on that trial date (who is the subject of the complaint) improperly consolidated the cases and forced the complainant to obtain a transcript for a trial that he did not attend, in order to hear previous evidence given in the libel case against him.

The complaint subcommittee reviewed the complaint and recommended that the complaint be dismissed as it was of the view that the complaint related to procedural issues and there had been no judicial misconduct. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-037/03

The complainant was the father of an alleged victim of an assault by a teacher at his school. The teacher, who was charged with assaulting the complainant's son, was acquitted after trial. The complainant alleged that the judge who heard the trial was prejudiced and biased and the trial result was wrong.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the Reasons for Judgment in the criminal trial. After reviewing the transcript, the complaint

subcommittee was of the view that the trial judge made findings of fact and an assessment of credibility based on all of the evidence before him. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in weighing the evidence before him and in making the decisions he made. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal by the Crown's office and are outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint.



APPENDIX-A

ONTARIO JUDICIAL COUNCIL –
DO YOU HAVE A COMPLAINT?

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

The information in this brochure deals with complaints of misconduct against a Provincial Judge or a Master.

Provincial Judges in Ontario – Who are they?

In Ontario, most criminal and family law cases are heard by one of the many judges appointed by the province to ensure that justice is done. Provincial Judges, who hear thousands of cases every year, practised law for at least ten years before becoming judges.

wrong conclusion, they may request a review or an **appeal** of the judge's decision in a higher court. This higher court is more commonly known as an appeal court. If the appeal court agrees that a mistake was made, the original decision can be changed, or a new hearing can be ordered.

Ontario's Justice System:

In Ontario, as in the rest of Canada, we have an adversarial justice system. In other words, when there is a conflict, both parties have the opportunity to present their version of the facts and evidence to a judge in a courtroom. Our judges have the difficult but vital job of deciding the outcome of a case based on the evidence they hear in court and their knowledge of the law.

For this type of justice system to work, judges **must** be free to make their decisions for the right reasons, without having to worry about the consequences of making one of the parties unhappy – whether that party is the government, a corporation, a private citizen or a citizens' group.

Professional Conduct of Judges

In Ontario, we expect high standards both in the delivery of justice and in the conduct of the judges who have the responsibility to make decisions. If you have a complaint about the conduct of a **Provincial Judge** or a **Master**, you may make a formal complaint to **The Ontario Judicial Council**.

Fortunately, judicial misconduct is unusual. Examples of judicial misconduct could include: gender or racial bias, having a conflict of interest with one of the parties or neglect of duty.

Is a Judge's Decision Final?

The judge's decision can result in many serious consequences. These can range from a fine, probation, a jail term or, in family matters, placement of children with one parent or the other. Often, the decision leaves one party disappointed. If one of the parties involved in a court case thinks that a judge has reached the

The Role of the Ontario Judicial Council

The Ontario Judicial Council is an agency which was established by the Province of Ontario under the *Courts of Justice Act*. The Judicial Council serves many functions, but its main role is to investigate complaints of **misconduct** made about provincially-appointed judges. The Council is made up of judges, lawyers and community members. The Council does **not** have the power to interfere with or change a judge's decision on a case. Only an appeal court can change a judge's decision.

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

Making a Complaint

If you have a complaint of misconduct about a Provincial Judge or a Master, you must state your complaint in a signed letter. The letter of complaint should include the date, time and place of the court hearing and as much detail as possible about why you feel there was misconduct. If your complaint involves an incident outside the courtroom, please provide as much information as you can, in writing, about what you feel was misconduct on the part of the judge.

If after careful consideration, the Council decides there has been no judicial misconduct, your complaint will be dismissed and you will receive a letter outlining the reasons for the dismissal.

In all cases, you will be advised of any decision made by the Council.

For Further Information

If you need any additional information or further assistance, in the greater Toronto area, please call 416-327-5672. If you are calling long distance, please dial the toll-free number: 1-800-806-5186. TTY/Teletypewriter users may call 1-800-695-1118, toll-free.

How are Complaints Processed?

When the Ontario Judicial Council receives your letter of complaint, the Council will write to you to let you know your letter has been received.

A subcommittee, which includes a judge and a community member, will investigate your complaint and make a recommendation to a larger review panel. This review panel, which includes two judges, a lawyer and another community member, will also carefully review your complaint prior to reaching its decision.

Written complaints should be mailed or faxed to:

The Ontario Judicial Council
P.O. Box 914
Adelaide Street Postal Station
31 Adelaide Street East
Toronto, Ontario M5C 2K3
416-327-2339 (FAX)

Decisions of the Council

Judicial misconduct is taken seriously. It may result in penalties ranging from issuing a warning to the judge, to recommending that a judge be removed from office.

If the Ontario Judicial Council decides there has been misconduct by a judge, a public hearing may be held and the Council will determine appropriate disciplinary measures.

Just a reminder...

The Ontario Judicial Council may only investigate complaints about the **conduct** of provincially-appointed Judges or Masters. If you are unhappy with a judge's **decision** in court, please consult with a lawyer to determine your options for appeal.

Any complaint about the **conduct** of a federally-appointed judge should be directed to the Canadian Judicial Council in Ottawa.



APPENDIX-B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

*Please Note: All statutory references in this document, unless otherwise specifically noted are to the **Courts of Justice Act, R.S.O. 1990**, as amended.*

COMPLAINTS

GENERALLY

Any person may make a complaint to the Judicial Council alleging misconduct by a provincially-appointed judge. If an allegation of misconduct is made to a member of the Judicial Council it shall be treated as a complaint made to the Judicial Council. If an allegation of misconduct against a provincially-appointed judge is made to any other judge, or to the Attorney General, the recipient of the complaint shall provide the complainant with information about the Judicial Council and how a complaint is made and shall refer the person to the Judicial Council.

subs. 51.3(1), (2) and (3)

Once a complaint has been made to the Judicial Council, the Judicial Council has carriage of the matter.

subs. 51.3(4)

COMPLAINT SUBCOMMITTEES

COMPOSITION

Complaints received by the Judicial Council shall be reviewed by a complaint subcommittee of the Judicial Council which consists of a judge, other than the Chief Justice of the Ontario Court of Justice and a lay member of the OJC (the term “judge” includes a master when a master is the subject of a complaint). Eligible members shall serve on the complaint subcommittees on a rotating basis.

subs. 51.4(1) and (2)

ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by members of complaint subcommittees and members of review panels can be found at pages 24 – 26 of this document.

STATUS REPORTS

Each member of a complaint subcommittee is provided with regular status reports, in writing, of the outstanding files that have been assigned to them. These status reports are mailed to each complaint subcommittee member at the beginning of every month. Complaint subcommittee members endeavour to review the status of all files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

Investigation

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council’s rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

A complaint subcommittee shall follow the Judicial Council’s guidelines and rules of procedures established for this purpose by the Judicial Council under subsection 51.5(1) in conducting investigations, making recommendations regarding temporary suspension and/or reassignment, making decisions about a complaint after their investigation is complete and/or in imposing conditions on their decision to refer a complaint to the Chief Justice of the Ontario Court of Justice. The Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the investigation of complaints by complaint subcommittees.

subs. 51.4(21)

AGREEMENT ON HOW TO PROCEED

Complaint subcommittee members review the file and materials (if any), and discuss same with each other prior to determining the substance of the complaint and prior to deciding what investigatory steps should be taken (ordering transcript, requesting response, etc.). No member of a complaint subcommittee shall take any investigative steps with respect to a complaint that has been assigned to him or her without first discussing the complaint with the other complaint subcommittee member and agreeing on the course of action to be taken. If there is a dispute between the complaint subcommittee members regarding an investigatory step, the matter will be referred to a review panel for its advice and input.

DISMISSAL OF COMPLAINT

A complaint subcommittee shall dismiss the complaint without further investigation if, in its opinion, it falls outside the Judicial Council's jurisdiction or if it is frivolous or an abuse of process.

subs. 51.4(3)

CONDUCTING INVESTIGATION

If the complaint is not dismissed, the complaint subcommittee shall conduct such investigation as it considers appropriate. The Judicial Council may engage persons, including counsel, to assist it in its investigation. The investigation shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(4), (5), (6) and (7)

PREVIOUS COMPLAINTS

A complaint subcommittee confines its investigation to the complaint before it. The issue of what weight, if any, should be given to previous complaints made against a judge who is the subject of another complaint before the OJC, may be considered by the members of the complaint subcommittee where the Registrar, with the assistance of legal counsel (if deemed necessary by the Registrar), first determines that the prior complaint or complaints are strikingly similar in the sense of similar fact evidence and

would assist them in determining whether or not the current incident could be substantiated.

INFORMATION TO BE OBTAINED BY REGISTRAR

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file. All material (transcripts, audio-tapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, on their instruction, and not by individual complaint subcommittee members.

TRANSCRIPTS, ETC.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved. If a transcript is ordered, court reporters are instructed not to submit the transcript to the subject judge for editing.

RESPONSE TO COMPLAINT

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the

complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at the hearing.

GENERALLY

Transcripts of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless a member advises otherwise.

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

ADVICE AND ASSISTANCE

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint. The complaint subcommittee may also consult with members of a Review Panel to seek their input and guidance during the investigative stages of the complaint process.

subs. 51.4(5)

MULTIPLE COMPLAINTS

The Registrar will assign any new complaints of a **similar nature** against a judge who already has an open complaint file, or files, to the same complaint subcommittee that is/are investigating the outstanding file(s). This will ensure that the complaint subcommittee members who are investigating a complaint against a particular judge are aware of the fact that there is a similar complaint, whether from the same complainant or another individual, against the same judge.

When a judge is the subject of three complaints from three different complainants within a period of three years, the Registrar will bring that fact to the attention of the Judicial Council, or a review panel thereof, for their assessment of whether or not the

multiple complaints should be the subject of advice to the judge by the Judicial Council or the Associate Chief Justice or Regional Senior Justice member of the Judicial Council.

INTERIM RECOMMENDATION TO SUSPEND OR REASSIGN

The complaint subcommittee may recommend to the appropriate Regional Senior Justice that the subject judge be suspended, with pay, or be reassigned to a different location, until the complaint is finally disposed of. If the subject judge is assigned to the region of the Regional Senior Justice who is a member of the Judicial Council, the complaint subcommittee shall recommend the suspension, with pay, or temporary reassignment to another Regional Senior Justice. The Regional Senior Justice in question may suspend or reassign the judge as the complaint subcommittee recommends. The exercise of the Regional Senior Justice's discretion to accept or reject the complaint subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice of the Ontario Court of Justice.

subs. 51.4(8), (9), (10) and (11)

COMPLAINT AGAINST CHIEF JUSTICE ET AL – INTERIM RECOMMENDATIONS

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice or the Regional Senior Justice who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

CRITERIA FOR INTERIM RECOMMENDATIONS TO SUSPEND OR REASSIGN

The Judicial Council has established the following criteria and rules of procedure under subsection 51.1(1) and they are to be used by a complaint subcommittee in making their decision to recommend to the appropriate Regional Senior Justice the

temporary suspension or re-assignment of a judge pending the resolution of a complaint:

subs. 51.4(21)

- where the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location
- where allowing the judge to continue to preside would likely bring the administration of justice into disrepute
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- where it is evident to the complaint subcommittee that a judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated

INFORMATION RE: INTERIM RECOMMENDATION

Where a complaint subcommittee recommends temporarily suspending or re-assigning a judge pending the resolution of a complaint, particulars of the factors upon which the complaint subcommittee's recommendations are based shall be provided contemporaneously to the Regional Senior Justice and the subject judge to assist the Regional Senior Justice in making his or her decision and to provide the subject judge with notice of the complaint and the complaint subcommittee's recommendation.

Where a complaint subcommittee or a review panel proposes to recommend temporarily suspending or re-assigning a judge, it may give the judge an opportunity to be heard on that issue in writing by notifying the judge by personal service, if possible, or if not registered mail of the proposed suspension or reassignment, of the reasons therefor, and of the judge's right to tender a response. If no response from the judge is received after 10 days from the date of mailing, the recommendation of an interim suspension or reassignment may proceed.

Reports to Review Panels

WHEN INVESTIGATION COMPLETE

When its investigation is complete, the complaint subcommittee shall either:

- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice,
- refer the complaint to a mediator, in accordance with criteria established by the Judicial Council pursuant to section 51.1(1), or
- refer the complaint to the Judicial Council, with or without recommending that it hold a hearing.

subs. 51.4(13)

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice of the Ontario Court of Justice or the Regional Senior Justice who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

PROCEDURE TO BE FOLLOWED

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint

subcommittee are ready to be reported to a review panel. The members of the complaint subcommittee will also provide a legible, fully completed copy of the appropriate pages of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration.

At least one member of a complaint subcommittee shall be present when the complaint subcommittee's report is made to a review panel. Attendance by a complaint subcommittee or review panel member may be by teleconference when necessary.

NO IDENTIFYING INFORMATION

The complaint subcommittee shall report its disposition of any complaint that is dismissed or referred to the Chief Justice of the Ontario Court of Justice or to a mediator to the Judicial Council without identifying the complainant or the judge who is the subject of the complaint and no information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

subs. 51.4(16)

DECISION TO BE UNANIMOUS

The decision by a complaint subcommittee to dismiss a complaint, refer the complaint to the Chief Justice of the Ontario Court of Justice or refer the complaint to a mediator must be a unanimous decision on the part of the complaint subcommittee members. If the complaint subcommittee members cannot agree, the complaint must be referred to the Judicial Council.

subs. 51.4(14)

CRITERIA FOR DECISIONS BY COMPLAINT SUBCOMMITTEES

A) TO DISMISS THE COMPLAINT

A complaint subcommittee will dismiss a complaint after reviewing the complaint if, in the complaint subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process. A complaint subcommittee may also recommend that a complaint be dismissed if, after

their investigation, they conclude that the complaint is unfounded.

subs. 51.4(3) and (13)

B) TO REFER TO THE CHIEF JUSTICE

A complaint subcommittee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaint subcommittee, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaint subcommittee will impose conditions on their referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject judge could take advantage and there is agreement by the subject judge.

subs. 51.4 (13) and (15)

C) TO REFER TO MEDIATION

A complaint subcommittee will refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the *Courts of Justice Act*. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where both members are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in the *Courts of Justice Act*. Until such time as criteria are established by the Judicial Council, complaints are excluded from the mediation process in the following circumstances:

- (1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;

- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

subs. 51.4(13) and 51.5

D) TO RECOMMEND A HEARING

A complaint subcommittee will refer a complaint to the Judicial Council, or a review panel thereof, and recommend that a hearing into a complaint be held where there has been an allegation of judicial misconduct that the complaint subcommittee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct

subs.51.4(13) and (16)

RECOMMENDATION RE: HEARING

If a recommendation to hold a hearing is made by the complaint subcommittee it may be made with, or without, a recommendation that the hearing be held *in camera* and if such recommendation is made, the criteria established by the Judicial Council (see page 11 below) will be used.

E) COMPENSATION

The complaint subcommittee's report to the review panel may also deal with the question of compensation of the judge's costs for legal services, if any, incurred during the investigative stage of the process if the complaint subcommittee is of the opinion that the complaint should be dismissed and has so recommended in its report to the Judicial Council. The Judicial Council may then recommend to the Attorney General that the judge's costs for legal services be paid, in accordance with section 51.7 of the Act.

subs. 51.7(1)

The decision as to whether or not to recommend compensation of a judge's costs for legal services will be made on a case by case basis.

REFERRING COMPLAINT TO COUNCIL

As noted above, a complaint subcommittee may also refer the complaint to the Judicial Council, with or without making a recommendation that it hold a hearing into the complaint. Both members of the complaint subcommittee need not agree with this recommendation and the Judicial Council, or a review panel thereof, has the power to require the complaint subcommittee to refer the complaint to it if it does not approve the complaint subcommittee's recommended disposition or if the complaint subcommittee cannot agree on the disposition. If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council, or a review panel thereof.

subs.51.4(16) and (17)

INFORMATION TO BE INCLUDED

Where a complaint is referred to a Review Panel of the Judicial Council by a complaint subcommittee, the complaint subcommittee shall forward to the Review Panel all documents, transcripts, statements, and other evidence considered by it in reviewing the complaint, including the response of the judge about whom the complaint is made, if any. The Review Panel shall consider such information in coming to its conclusion regarding the appropriate disposition of the complaint.

REVIEW PANELS

PURPOSE

The Judicial Council may establish a review panel for the purpose of: -

- considering the report of a complaint subcommittee,
- considering a complaint referred to it by a complaint subcommittee
- considering a mediator's report
- considering a complaint referred to it out of mediation, and
- considering the question of compensation

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

and the review panel has all the powers of the Judicial Council for these purposes.

subs. 49(14)

COMPOSITION

A review panel is made up of two provincially-appointed judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a lay member of the OJC and shall not include either of the two members who served on the complaint subcommittee who investigated the complaint and made the recommendation to the review panel. One of the judges, designated by the Council, shall chair the review panel and four members constitute a quorum. The chair of the review panel is entitled to vote and may cast a second deciding vote if there is a tie.

subs. 49(15),(18) and (19)

WHEN REVIEW PANEL FORMED

A review panel is formed to review the decisions made about complaints by complaint subcommittees and dispose of open complaint files at every regularly scheduled meeting of the OJC, if the quorum requirements of the governing legislation can be satisfied.

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the consideration

of complaint subcommittee reports made to a review panel or referred to it by a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for this purpose.

subs. 51.4(22)

Review of Complaint Subcommittee's Report

REVIEW IN PRIVATE

The review panel shall consider the complaint subcommittee's report, in private, and may approve its disposition or may require the complaint subcommittee to refer the complaint to the Council in which case the review panel shall consider the complaint, in private.

subs. 51.4(17)

PROCEDURE ON REVIEW

The review panel shall examine the letter of complaint, the relevant parts of the transcript (if any), the response from the judge (if any), etc., with all identifying information removed therefrom, as well as the report of the complaint subcommittee, until its members are satisfied that the issues of concern have been identified and addressed by the complaint subcommittee in its investigation of the complaint and in its recommendation(s) to the review panel about the disposition of the complaint.

A review panel may reserve its decision on a complaint subcommittee's recommendation and may adjourn from time to time to consider its decision or direct the complaint subcommittee to conduct further investigation and report back to the review panel.

If the members of the review panel are not satisfied with the report of the complaint subcommittee, they may refer the complaint back to the complaint subcommittee for further investigation or make any other direction or request of the complaint subcommittee that they deem to be appropriate.

If it is necessary to hold a vote on whether or not to accept the recommendation of a complaint subcommittee, and there is a tie, the chair will cast a second and deciding vote.

Referral of Complaint to a Review Panel

WHEN REFERRED

When a complaint subcommittee submits its report to a review panel, the review panel may approve the complaint subcommittee's disposition or require the complaint subcommittee to refer the complaint to it to consider. The members of a review panel will require a complaint subcommittee to refer the complaint to them in circumstances where the members of the complaint subcommittee cannot agree on the recommended disposition of the complaint or where the recommended disposition of the complaint is unacceptable to a majority of the members of the review panel.

subs. 51.4(13), (14) and (17)

POWER OF A REVIEW PANEL ON REFERRAL

If a complaint is referred to it by a complaint subcommittee or a review panel requires a complaint subcommittee to refer a complaint to it to consider, the complainant and the subject judge may be identified to the members of the review panel who shall consider the complaint, in private, and may: –

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(16) and (18)

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedures under subsection 51.1(1) with respect to the consideration of complaints that are referred to it by a complaint subcommittee or in consideration of complaints that it causes to be referred to it from a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for the purpose.

subs. 51.4(22)

Guidelines re: Dispositions

A) ORDERING A HEARING

A review panel will order a hearing be held in circumstances where the majority of members of the review panel are of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the review panel believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. The recommendation to hold a hearing made by the review panel may be made with, or without, a recommendation that the hearing be held *in camera* and if such recommendation is made, the criteria established by the Judicial Council (see page 18 below) will be used.

B) DISMISSING A COMPLAINT

A review panel will dismiss a complaint in circumstances where the majority of members of the review panel are of the opinion that the allegation of judicial misconduct falls outside the jurisdiction of the Judicial Council, is frivolous or an abuse of process, or where the review panel is of the view that, the complaint is unfounded. A review panel will not generally dismiss as unfounded a complaint unless it is satisfied that there is no basis in fact for the allegations against the provincially-appointed judge.

C) REFERRING A COMPLAINT TO THE CHIEF JUSTICE

A review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the majority of members of the review panel are of the opinion that the conduct complained of does not warrant another disposition and there is some merit to the complaint and the disposition is, in the opinion of the majority of members of the review panel, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A review panel will recommend imposing conditions on their referral of a complaint to the Chief Justice of the Ontario Court of Justice where a majority of the members of a review panel agree that there is some course of action or remedial training of which the subject judge can take advantage of and there is agreement by the judge in accordance with subs. 51.4(15). The Chief Justice of the Ontario Court of Justice will provide a written report on the disposition of the complaint to the review panel and complaint subcommittee members.

D) REFERRING A COMPLAINT TO MEDIATION

A review panel may refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the *Courts of Justice Act*. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where a majority of the members of the review panel are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in subsection 51.5(3) of the *Courts of Justice Act*. Until such time as criteria are established, complaints are excluded from the mediation process in the following circumstances:

- (1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;

- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

Notice of Decision

DECISION COMMUNICATED

The Judicial Council, or a review panel thereof, shall communicate its decision to both the complainant and the subject judge and if the Judicial Council decides to dismiss the complaint, it will provide the parties with brief reasons.

subs. 51.4(20)

ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by the Judicial Council when notifying the parties of its decision can be found at pages 25 and 26 of this document.

HEARING PANELS

APPLICABLE LEGISLATION

All hearings held by the Judicial Council are to be held in accordance with section 51.6 of the *Courts of Justice Act*.

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The *Statutory Powers Procedure Act* applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings without a hearing (section 4, S.P.P.A.) or its provisions for public hearings (subs. 9(1) S.P.P.A.). The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3) and 51.6(2)

The Judicial Council's rules of procedure established under subsection 51.1(1) apply to a hearing held by the Judicial Council.

subs. 51.6(3)

COMPOSITION

The following rules apply to a hearing panel established for the purpose of holding a hearing under section 51.6 (adjudication by the Ontario Judicial Council) or section 51.7 (considering the question of compensation):

- 1) half the members of the panel, including the chair, must be judges and half of the members of the panel must be persons who are not judges
- 2) at least one member must be a person who is neither a judge nor a lawyer
- 3) the Chief Justice of Ontario, or another judge of the Ontario Court of Appeal designated by the Chief Justice, shall chair the hearing panel
- 4) the Judicial Council may determine the size and composition of the panel, subject to paragraphs 1, 2 & 3 above
- 5) all the members of the hearing panel constitute a quorum (subs. 49(17))
- 6) the chair of the hearing panel is entitled to vote and may cast a second deciding vote if there is a tie
- 7) the members of the complaint subcommittee that investigated the complaint shall not participate in a hearing of the complaint
- 8) the members of a review panel that received and considered the recommendation of a complaint subcommittee shall not participate in a hearing of the complaint (subs. 49(20))

subs. 49(17), (18), (19) and (20)

POWER

A hearing panel established by the Judicial Council for the purposes of section 51.6 or 51.7 has all the powers of the Judicial Council for that purpose.

subs. 49(16)

HEARINGS

COMMUNICATION BY MEMBERS

Members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate. This prohibition on communication does not preclude the Judicial Council from engaging legal counsel to assist it and, in that case, the nature of the advice given by counsel shall be communicated to the parties so that they may make submissions as to the law.

subs. 51.6(4) and (5)

PARTIES TO THE HEARING

The Judicial Council shall determine who are the parties to the hearing.

subs. 51.6(6)

PUBLIC OR PRIVATE/ALL OR PART

Judicial Council hearings into complaints and meetings to consider the question of compensation shall be open to the public unless the hearing panel determines, in accordance with criteria established under section 51.1(1) by the Judicial Council, that exceptional circumstances exist and the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality in which case it may hold all or part of a hearing in private.

subs. 49(11) and 51.6(7)

The *Statutory Powers Procedure Act* applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings without a hearing (section 4, S.P.P.A.) or its provisions for public hearings (subs. 9(1), S.P.P.A.).

subs. 51.6(2)

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

If a complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of the complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

subs. 51.6(9)

OPEN OR CLOSED HEARINGS – CRITERIA

The Judicial Council has established the following criteria under subsection 51.1(1) to assist it in determining whether or not the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality. If the Judicial Council determines that exceptional circumstances exist in accordance with the following criteria, it may hold all, or part, of the hearing in private.

subs. 51.6(7)

The members of the Judicial Council will consider the following criteria to determine what exceptional circumstances must exist before a decision is made to maintain confidentiality and hold all, or part, of a hearing in private:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

REVEALING JUDGE'S NAME WHEN HEARING WAS PRIVATE – CRITERIA

If a hearing was held in private, the Judicial Council shall order that the judge's name not be disclosed or made public unless it determines, in accordance with the criteria established under subsection 51.1(1), that there are exceptional circumstances.

subs. 51.6(8)

The members of the Judicial Council will consider the following criteria before a decision is made about when it is appropriate to publicly reveal the name of a judge even though the hearing has been held in private:

- a) at the request of the judge, or
- b) in circumstances where it would be in the public interest to do so.

WHEN AN ORDER PROHIBITING PUBLICATION OF JUDGE'S NAME MAY BE MADE, PENDING THE DISPOSITION OF A COMPLAINT – CRITERIA

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

The members of the Judicial Council will consider the following criteria to determine when the Judicial Council may make an order prohibiting the publication of information that might identify the judge who is the subject of a complaint, pending the disposition of a complaint:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

NEW COMPLAINT

If, during the course of the hearing, additional facts are disclosed which, if communicated to a member of the Judicial Council, would constitute an allegation of misconduct against a provincially-appointed judge outside of the ambit of the complaint which is the subject of the hearing, the Registrar shall prepare a summary of the particulars of the complaint and forward

same to a complaint subcommittee of the Judicial Council to be processed as an original complaint. The Complaint subcommittee shall be composed of members of the Judicial Council other than those who compose the panel hearing the complaint.

PROCEDURAL CODE FOR HEARINGS

PREAMBLE

These Rules of Procedure apply to all hearings of the Judicial Council convened pursuant to section 51.6 of the *Courts of Justice Act* and are established and made public pursuant to paragraph 51.1(1)6 of the *Courts of Justice Act*.

These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

INTERPRETATION

1. The words in this code shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Courts of Justice Act*.

(1) In this code,

- (a) “Act” shall mean the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended.
- (b) “Panel” means the Panel conducting a hearing and established pursuant to subsection 49(16) of the *Act*.
- (c) “Respondent” shall mean a judge in respect of whom an order for a hearing is made pursuant to subsection 51.4(18)(a) of the *Act*.
- (d) “Presenting Counsel” means counsel engaged on behalf of the Council to prepare and present the case against a Respondent.

PRESENTATION OF COMPLAINTS

2. The Council shall, on the making of an order for a hearing in respect of a complaint against a judge, engage Legal Counsel for the purposes of

preparing and presenting the case against the Respondent.

- 3. Legal Counsel engaged by the Council shall operate independently of the Council.
- 4. The duty of Legal Counsel engaged under this Part shall not be to seek a particular order against a Respondent, but to see that the complaint against the judge is evaluated fairly and dispassionately to the end of achieving a just result.
- 5. For greater certainty, Presenting Counsel are not to advise the Council on any matters coming before it. All communications between Presenting Counsel and the Council shall, where communications are personal, be made in the presence of counsel for the Respondent, and in the case of written communications, such communications shall be copied to the Respondents.

NOTICE OF HEARING

- 6. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.
- 7. Presenting Counsel shall prepare the Notice of Hearing.

(1) The Notice of Hearing shall contain,

- (a) particulars of the allegations against the Respondent;
- (b) a reference to the statutory authority under which the hearing will be held;
- (c) a statement of the time and place of the commencement of the hearing;
- (d) a statement of the purpose of the hearing;
- (e) a statement that if the Respondent does not attend at the hearing, the Panel may proceed in the Respondent’s absence and the Respondent will not be entitled to any further notice of the proceeding; and,

8. Presenting Counsel shall cause the Notice of Hearing to be served upon the Respondent by personal service or, upon motion to the Panel hearing the complaint, an alternative to personal service and shall file proof of service with the Council.

RESPONSE

9. The Respondent may serve on Presenting Counsel and file with the Council a Response to the allegations in the Notice Hearing.
 - (1) The Response may contain full particulars of the facts on which the Respondent relies.
 - (2) A Respondent may at any time before or during the hearing serve on Presenting Counsel and file with the Council an amended Response.
 - (3) Failure to file a response shall not be deemed to be an admission of any allegations against the Respondent.

DISCLOSURE

10. Presenting Counsel shall, before the hearing, forward to the Respondent or to counsel for the Respondent names and addresses of all witnesses known to have knowledge of the relevant facts and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
11. Presenting Counsel shall also provide, prior to the hearing, all non-privileged documents in its possession relevant to the allegations in the Notice of Hearing.
12. The Hearing Panel may preclude Presenting Counsel from calling a witness at the hearing if Presenting Counsel has not provided the Respondent with the witness's name and address, if available, and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
13. Part V applies, *mutatis mutandis*, to any information which comes to Presenting Counsel's attention after disclosure has been made pursuant to that Part.

PRE-HEARING CONFERENCE

14. The Panel may order that a pre-hearing conference take place before a judge who is a member of the Council but who is not a member of the Panel to hear the allegations against the Respondent, for the purposes of narrowing the issues and promoting settlement.

THE HEARING

15. For greater certainty, the Respondent has the right to be represented by counsel, or to act on his own behalf in any hearing under this Code.
16. The Panel, on application at any time by Presenting Counsel or by the Respondent, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the Panel which are relevant to the subject matter of the hearing and admissible at the hearing.
 - (1) A summons issued under this section shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.
17. The hearing shall be conducted by a Panel of members of the Council composed of members who have not participated in a complaint sub-committee investigation of the complaint or in a Panel reviewing a report from such complaint sub-committee.
 - (1) The following guidelines apply to the conduct of the hearing, unless the Panel, on motion by another party, or on consent requires otherwise.
 - (a) All testimony shall be under oath or affirmation or promise.
 - (b) Presenting Counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing by direct examination of witnesses.
 - (c) Counsel for the Respondent may make an opening statement, either immediately following Presenting Counsel's opening statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and after the Respondent has made an opening statement, the Respondent may present evidence.
 - (d) All witnesses may be cross-examined by counsel for the opposite party and re-examined as required.

- (e) The hearing shall be recorded verbatim and transcribed where requested. Where counsel for the Respondent requests, he or she may be provided with a transcript of the hearing within a reasonable time and at no cost.
- (f) Both Presenting Counsel and the Respondent may submit to the Panel proposed findings, conclusions, recommendations or draft orders for the consideration of the Hearing Panel.
- (g) Presenting Counsel and counsel for the Respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, in the order to be determined by the Hearing Panel.

PRE-HEARING RULINGS

18. Either party to the hearing may, by motion, not later than 10 days before the date set for commencement of the hearing, bring any procedural or other matters to the Hearing Panel as are required to be determined prior to the hearing of the complaint.

(1) Without limiting the generality of the foregoing, a motion may be made for any of the following purposes:

- (a) objecting to the jurisdiction of the Council to hear the complaint;
- (b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the Panel;
- (c) objecting to the sufficiency of disclosure by Presenting Counsel;
- (d) determining any point of law for the purposes of expediting the hearing; or
- (e) determining any claim of privilege in respect of the evidence to be presented at the hearing; or
- (f) any matters relating to scheduling.

(2) A motion seeking any of the relief enumerated in this section may not be brought during the hearing, without leave of the Hearing Panel, unless it is based upon the manner in which the hearing has been conducted.

(3) The Hearing Panel, may, on such grounds as it deems appropriate, abridge the time for bringing any motion provided for by the pre-hearing rules.

19. The Council shall, as soon as is reasonably possible, appoint a time and a place for the hearing of submissions by both sides on any motion brought pursuant to subsection 19(1), and shall, as soon as is reasonably possible, render a decision thereon.

POST-HEARINGS

Disposition at Hearing

DISPOSITION

After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may

- a) warn the judge;
- b) reprimand the judge;
- c) order the judge to apologize to the complainant or to any other person;
- d) order the judge to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a judge;
- e) suspend the judge with pay, for any period;
- f) suspend the judge without pay, but with benefits, for a period up to thirty days; or
- g) recommend to the Attorney General that the judge be removed from office (in accordance with section 51.8).

subs. 51.6(11)

COMBINATION OF SANCTIONS

The Judicial Council may adopt any combination of the foregoing sanctions except that the recommendation to the Attorney General that the judge be removed from office will not be combined with any other sanction.

subs. 51.6(12)

Report to Attorney General

REPORT

The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition (subject to any orders made about confidentiality of documents by the Judicial Council) and the Attorney General may make the report public if he/she is of the opinion this would be in the public interest.

subs. 51.6(18)

IDENTITY WITHHELD

If a complainant or witness asked that their identity be withheld during the hearing and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with the criteria established by the Judicial Council under subsection 51.6(8) (please see page B – 11 above).

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council (please see page B – 11 above) and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

Order to Accommodate

If the effect of a disability on the judge's performance of the essential duties of judicial office is a factor in a complaint, which is either dismissed or disposed of in any manner short of recommending to the Attorney General that the judge be removed, and the judge would be able to perform the essential duties of judicial office if his or her needs were accommodated, the Judicial Council shall order the judge's needs to be accommodated to the extent necessary to enable him or her to perform those duties.

Such an order to accommodate may not be made if the Judicial Council is satisfied that making the order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The Judicial Council shall also not make an order to accommodate against a person without ensuring that the person has had an opportunity to participate and make submissions.

An order made by the Judicial Council to accommodate a judge's needs binds the Crown.

subs. 51.6(13), (14), (15), (16) and (17)

Removal from Office

REMOVAL

A provincially-appointed judge may be removed from office only if:

- a) a complaint about the judge has been made to the Judicial Council; and
- b) the Judicial Council, after a hearing, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPENSATION

hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),

(ii) conduct that is incompatible with the due execution of his or her office, or

(iii) failure to perform the duties of his or her office.

subs. 51.8(1)

TABLING OF RECOMMENDATION

The Attorney General shall table the Judicial Council's recommendation in the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of its next session.

subs. 51.8(2)

ORDER REMOVING JUDGE

An order removing a provincially-appointed judge from office may be made by the Lieutenant Governor on the address of the Legislative Assembly.

subs. 51.8(3)

APPLICATION

This section applies to provincially-appointed judges who have not yet attained retirement age and to provincially-appointed judges whose continuation in office after attaining retirement age has been approved by the Chief Justice of the Ontario Court of Justice. This section also applies to a Chief, or Associate Chief Justice who has been continued in office by the Judicial Council, either as a Chief, or Associate Chief Justice of the Ontario Court of Justice, or who has been continued in office as a judge by the Judicial Council.

subs. 51.8(4)

COMPENSATION

AFTER COMPLAINT DISPOSED OF

When the Judicial Council has dealt with a complaint against a provincially-appointed judge, it shall consider whether the judge should be compensated for all or part of his or her costs for legal services incurred in connection with the steps taken in relation to the complaint, including review and investigation of a

complaint by a complaint subcommittee, review of a complaint subcommittee's report by the Judicial Council, or a review panel thereof, review of a mediator's report by the Judicial Council, or a review panel thereof, the hearing into a complaint by the Judicial Council, or a hearing panel thereof, and legal services incurred in connection with the question of compensation. The Judicial Council's consideration of the question of compensation shall be combined with a hearing into a complaint, if one is held.

subs. 51.7(1) and (2)

PUBLIC OR PRIVATE

If a hearing was held and was public, the consideration of the compensation question shall be public; otherwise, the consideration of the question of compensation shall take place in private.

subs. 51.7(3)

RECOMMENDATION

If the Judicial Council is of the opinion that the judge should be compensated, it shall make such a recommendation to the Attorney General, indicating the amount of compensation.

subs. 51.7(4)

WHERE COMPLAINT DISMISSED AFTER A HEARING

If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount of compensation.

subs. 51.7(5)

DISCLOSURE OF NAME

The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the judge's name unless there was a public hearing into the complaint or the Judicial Council has otherwise made the judge's name public.

subs. 51.7(6)

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – CONFIDENTIALITY AND PROTECTION OF PRIVACY

AMOUNT AND PAYMENT

The amount of compensation recommended to be paid may relate to all, or part, of the judge's costs for legal services and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General shall pay compensation to the judge in accordance with the recommendation.

subs. 51.7(7) and (8)

CONFIDENTIALITY AND PROTECTION OF PRIVACY

INFORMATION TO PUBLIC

At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it.

subs. 51.3(5)

POLICY OF JUDICIAL COUNCIL

The complaint subcommittee's investigation into a complaint shall be conducted in private, and its report about a complaint or referral of a complaint to the Judicial Council, or a review panel thereof, is considered in private, in accordance with subsections 51.4(6) and 51.4(17) and (18). It is the policy of the Judicial Council, made pursuant to subsections 51.4(21) and (22), that it will not confirm or deny that a particular complaint has been made to it, as permitted by subsection 51.3(5), unless the Judicial Council, or a hearing panel thereof, has determined that there will be a public hearing into the complaint.

COMPLAINT SUBCOMMITTEE INVESTIGATION PRIVATE

The investigation into a complaint by a complaint subcommittee shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(6) and (7)

REVIEW PANEL DELIBERATION PRIVATE

The Judicial Council, or a review panel thereof, shall: –

- consider the complaint subcommittee's report, in private, and may approve its disposition, or
- may require the complaint subcommittee to refer the complaint to the Council.

subs. 51.4(17)

If a complaint is referred to it by a complaint subcommittee, the Judicial Council, or a Review Panel thereof, shall consider such complaint, in private, and may:

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Judge (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(18)

WHEN IDENTITY OF JUDGE REVEALED TO REVIEW PANEL

If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council or a review panel thereof, and such a complaint will be considered in private.

subs. 51.4(16) and (17)

HEARINGS MAY BE PRIVATE

If the Judicial Council determines, in accordance with criteria established under subsection 51.1(1) that the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, it may hold all or part of a hearing in private.

subs. 51.6(7)

JUDGE'S NAME NOT DISCLOSED

If a hearing is held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1(1) that there are exceptional circumstances, order the judge's name not be disclosed or made public.

subs. 51.6(8)

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – CONFIDENTIALITY AND PROTECTION OF PRIVACY

ORDER PROHIBITING PUBLICATION

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

CRITERIA ESTABLISHED

For the criteria established by the Judicial Council under subsection 51.1(1) with respect to subsections 51.6(7), (8) and (10), please see page B – 11 above.

REPORT TO ATTORNEY GENERAL

If a complainant or witness asked that their identity be withheld during the hearing, and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with criteria established under subsection 51.6(8).

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

ORDER NOT TO DISCLOSE

The Judicial Council or a complaint subcommittee may order that any information or documents relating

to a mediation or a Judicial Council meeting or hearing that was not held in public, whether the information or documents are in the possession of the Judicial Council or of the Attorney General, or of any other person, are confidential and shall not be disclosed or made public.

subs. 49(24) and (25)

EXCEPTION

The foregoing does not apply to information and documents that the *Courts of Justice Act* requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purpose of mediation or a Judicial Council meeting or hearing.

subs. 49(26)

AMENDMENTS TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Section 65 of the *Freedom of Information and Protection of Privacy Act* is amended by adding the following subsections:

- (4) This *Act* does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation.
- (5) This *Act* does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:
 1. The Judicial Council or its complaint subcommittee has ordered that the record or information in the record not be disclosed or made public.
 2. The Judicial Council has otherwise determined that the record is confidential.
 3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public.

ACCOMMODATION OF DISABILITIES

APPLICATION FOR ORDER

A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order that such needs be accommodated.

subs. 45.(1)

DUTY OF JUDICIAL COUNCIL

If the Judicial Council finds that a judge is unable, because of a disability, to perform the essential duties of office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 45.(2)

UNDUE HARDSHIP

Subsection 45.(2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

subs. 45.(3)

GUIDELINES AND RULES OF PROCEDURE

In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedures established under subsection 51.1(1).

subs. 45.4(4)

OPPORTUNITY TO PARTICIPATE

The Judicial Council will not make an order to accommodate against a person under subsection 45.(2) without ensuring that the person has had an opportunity to participate and make submissions.

subs. 45.(5)

ORDER BINDS THE CROWN

The order made by the Judicial Council to accommodate a judge's needs binds the Crown.

subs. 45.(6)

CHAIR FOR MEETING

The Chief Justice of Ontario, or designate from the Court of Appeal, shall chair meetings held for the purposes of ordering accommodation.

subs. 49.(8)

CHAIR ENTITLED TO VOTE

The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 49.(10)

QUORUM FOR MEETING

Eight members of the Judicial Council, including the chair, constitute a quorum for the purposes of dealing with an application for accommodation of disabilities. At least half the members present must be judges and at least four members present must be persons who are not judges.

subs. 49.(13)

EXPERT ASSISTANCE

The Judicial Council may engage persons, including counsel, to assist it.

subs. 49.(21)

CONFIDENTIAL RECORDS

The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public. An order of non-disclosure may be made whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person. An order of non-disclosure cannot be made with respect to information and/or documents that the *Courts of Justice Act*

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

subs. 49(24)(25) & (26)

The Judicial Council shall establish and make public rules governing its own procedures, including guidelines and rules of procedure for the purpose of the accommodation of disabilities.

subs. 51.1(1)

ACCOMMODATION ORDER AFTER A HEARING

If, after a hearing into a complaint has been held, the Judicial Council finds that the judge who was the subject of the complaint is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 51.6(13)

RULES OF PROCEDURE AND GUIDELINES

The following are the rules of procedure and guidelines established by the Ontario Judicial Council for the purpose of the accommodation of disabilities.

APPLICATION IN WRITING

An application for accommodation of disability by a judge shall be in writing and shall include the following information: -

- a description of the disability to be accommodated;
- a description of the essential duties of the judge's office for which accommodation is required;
- a description of the item and/or service required to accommodate the judge's disability;
- a signed letter from a qualified doctor or other medical specialist (e.g., chiropractor, physiotherapist, etc.) supporting the judge's application for accommodation;
- the application and supporting materials are inadmissible, without the consent of the appli-

cant, in any investigation or hearing, other than the hearing to consider the question of accommodation;

- disclosure of the application and supporting materials by the Ontario Judicial Council to the public is prohibited without the consent of the applicant.

ACCOMMODATION SUBCOMMITTEE

On receipt of an application, the Council will convene a subcommittee of the Council composed of one judge and one lay member of the Council (an "accommodation subcommittee"). At its earliest convenience the accommodation subcommittee shall meet with the applicant and with any person against whom the accommodation subcommittee believes an order to accommodate may be required, and retain such experts and advice as may be required, to formulate and report an opinion to the Council in relation to the following matters:

- the period of time that the item and/or service would be required to accommodate the judge's disability;
- the approximate cost of the item and/or service required to accommodate the judge's disability for the length of time the item and/or service is estimated to be required (i.e., daily, weekly, monthly, yearly).

REPORT OF ACCOMMODATION SUBCOMMITTEE

The report to the Council shall consist of all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

If, after meeting with the applicant, the accommodation subcommittee is of the view that the applicant does not suffer from a disability, it shall communicate this fact to the Council in its report.

INITIAL CONSIDERATION OF APPLICATION AND REPORT

The Judicial Council shall meet, at its earliest convenience, to consider the application and the report of the accommodation subcommittee in order to determine whether or not the application for accommodation gives

rise to an obligation under the statute to accommodate the applicant short of undue hardship.

THRESHOLD TEST FOR QUALIFICATION AS DISABILITY

The Judicial Council will be guided generally by Human Rights jurisprudence relating to the definition of “disability” for the purposes of determining whether an order to accommodate is warranted.

The Judicial Council will consider a condition to amount to a disability where it may interfere with the Judge’s ability to perform the essential functions of a judge’s office.

NOTIFICATION OF MINISTER

If the Judicial Council is satisfied that the condition meets the threshold test for qualification as a disability and if the Judicial Council is considering making an order to accommodate same, then the Judicial Council shall provide a copy of the application for accommodation of disability together with the report of the accommodation subcommittee to the Attorney General, at its earliest convenience. The report of the accommodation subcommittee shall include all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

SUBMISSIONS ON UNDUE HARDSHIP

The Judicial Council will invite the Minister to make submissions, in writing, as to whether or not any order that the Council is considering making to accommodate a judge’s disability will cause “undue hardship” to the Ministry of the Attorney General or any other person affected by the said order to accommodate. The Judicial Council will view the Minister, or any other person against whom an order to accommodate may be made, as having the onus of showing that accommodating the applicant will cause undue hardship.

In considering whether accommodation of the applicant will cause undue hardship, the Council will generally be guided by Human Rights jurisprudence relating to

the question whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

TIME FRAME FOR RESPONSE

The Judicial Council shall request that the Minister respond to its notice of the judge’s application for accommodation within thirty (30) calendar days of the date of receipt of notification from the Judicial Council. The Minister will, within that time frame, advise the Judicial Council whether or not the Minister intends to make any response to the application for accommodation. If the Minister does intend to respond, such response shall be made within sixty (60) days of the Minister’s acknowledgement of the notice and advice that the Minister intends to respond. The Judicial Council will stipulate in its notice to the Minister that an order to accommodate will be made in accordance with the judge’s application and the Judicial Council’s initial determination in the absence of any submission or acknowledgement from the Minister.

MEETING TO DETERMINE ORDER TO ACCOMMODATE

After receipt of the Minister’s submissions with respect to “undue hardship” or the expiration of the time period specified in its notice to the Minister, whichever comes first, the Ontario Judicial Council shall meet, at its earliest convenience, to determine the order it shall make to accommodate the judge’s disability. The Judicial Council will consider the judge’s application and supporting material and submissions made, if any, regarding the question of “undue hardship”, before making its determination.

COPY OF ORDER

A copy of the order made by the Judicial Council to accommodate a judge’s disability shall be provided to the judge and to any other person affected by the said order within ten (10) calendar days of the date of the decision being made.

SPECIAL CONSIDERATIONS

FRENCH-SPEAKING COMPLAINANTS/JUDGES

Complaints against provincially-appointed judges may be made in English or French.

subs. 51.2(2)

A hearing into a complaint by the Judicial Council shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request, to be given before the hearing, French translations of documents that are written in English and are to be considered at the hearing; to be provided with the assistance of an interpreter at the hearing; and to be provided with simultaneous interpretation into French of the English portions of the hearing.

subs. 51.2(3)

This entitlement to translation and interpretation extends to mediation and to the consideration of the question of compensation, if any.

subs. 51.2(4)

The Judicial Council may direct that a hearing or mediation of a complaint where a complainant or witness speaks French, or the complained-of judge speaks French, be conducted bilingually, if the Judicial Council is of the opinion that it can be properly conducted in that manner.

subs. 51.2(5)

A directive under subsection (5) may apply to a part of the hearing or mediation and, in that case, subsections (7) and (8) below apply with necessary modifications.

subs. 51.2(6)

In a bilingual hearing or mediation,

- a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- b) documents may be filed in either language;
- c) in the case of a mediation, discussions may take place in either language;

- d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

subs. 51.2(7)

In a bilingual hearing or mediation, if the complainant or the judge complained-of does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

subs. 51.2(8)

COMPLAINTS AGAINST CHIEF JUSTICE ET AL

If the Chief Justice of the Ontario Court of Justice is the subject of a complaint, the Chief Justice of Ontario shall appoint another judge of the Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice until the complaint is finally disposed of. The Associate Chief Justice appointed to the Judicial Council shall chair meetings and hearings of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice and appoint temporary members of the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(a) and (b)

Any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice (by a complaint subcommittee after its investigation, by the Judicial Council or a review panel thereof after its review of a complaint subcommittee's report or referral or by the Judicial Council after mediation), shall be made to the Chief Justice of the Superior Court of Justice instead of the Chief Justice of the Ontario Court of Justice, until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(c)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, any complaints that would other-

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wise be referred to the Chief Justice of the Ontario Court of Justice shall be referred to the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(a)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(b)

If either the Associate Chief Justice or Regional Senior Justice appointed to the Judicial Council is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or Regional Senior Justice, as the case may be, until the complaint against the Associate Chief Justice, or Regional Senior Justice appointed to the Judicial Council, is finally disposed of.

subs. 50(3)

COMPLAINTS AGAINST SMALL CLAIMS COURT JUDGES

Subsection 87.1(1) of the *Courts of Justice Act* applies to provincially-appointed judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, with special provisions.

COMPLAINTS

When the Judicial Council deals with a complaint against a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced

by a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.

2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

subs. 87.1(4)

COMPLAINTS AGAINST MASTERS

Subsection 87.3) of the *Courts of Justice Act* states that sections 44 to 51.12 applies to masters, with necessary modifications, in the same manner as to provincially-appointed judges.

COMPLAINTS

When the Judicial Council deals with a complaint against a master, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

ADMINISTRATIVE MATTERS

INTAKE/OPENING COMPLAINT FILES:

- Where a complaint is made orally by a person intending to make a complaint to the Judicial Council or a member acting in their capacity as a member of the Judicial Council thereof, the person making the allegation shall be encouraged to make the complaint in writing. If such person does not within 10 days of making the allegation tender a written complaint to the Council, the Registrar shall, on consultation with legal counsel and the Judicial Council member to whom the allegation was made, set out the particulars of the complaint in writing. Such written summary of the allegation shall be forwarded by registered mail to the person making the allegation, if he or she can be located, along with a statement that the allegation as summarized will become the complaint on the basis of which the conduct of the provincially-appointed judge in question will be evaluated. On the tenth day after the mailing of such summary, and in the absence of any response from the person making the allegation, the written summary shall be deemed to be a complaint alleging misconduct against the provincially-appointed judge in question.
- if the complaint is within the jurisdiction of the OJC (any provincially-appointed judge or master – full-time or part-time) a complaint file is opened and assigned to a two-member complaint subcommittee for review and investigation (complaints that are outside the jurisdiction of the OJC are referred to the appropriate agency)
- the Registrar will review each letter of complaint upon receipt and if it is determined that a file will be opened and assigned, the Registrar will determine whether or not it is necessary to order a transcript and/or audiotape for review by the complaint subcommittee and, if so, will direct the Assistant Registrar to order same.
- the complaint is added to the tracking form, a sequential file number is assigned, a letter of acknowledgement is sent to the complainant within a week of his or her letter being received, page one of the complaint intake form is completed

and a letter to the complaint subcommittee members, together with the Registrar's recommendations regarding the file, if any, is prepared. Copies of all materials are placed in the office copy and each member's copy of the complaint file.

Status reports on all open complaint files – with identifying information removed – is provided to each member of the OJC at each of its regular meetings.

COMPLAINT SUBCOMMITTEES:

Complaint subcommittee members endeavour to review the status of all opened files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

A letter advising the complaint subcommittee members that they have had a new case assigned to them is sent to the complaint subcommittee members, for their information, within a week of the file being opened and assigned. The complaint subcommittee members are contacted to determine if they want their copy of the file delivered to them or kept in their locked filing cabinet drawer in the OJC office. If files are delivered, receipt of the file by the member is confirmed. Complaint subcommittee members may attend at the OJC office to examine their files during regular office hours.

Complaint subcommittee members will endeavour to review and discuss their assigned files within a month of receipt of the file. All material (transcripts, audio-tapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, and not by individual complaint subcommittee members.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved.

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at a hearing.

Transcripts and/or audiotapes of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless the members advise otherwise.

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint.

subs. 51.4(5)

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint subcommittee are ready to be reported to a review panel. The complaint subcommittee will also provide a legible, fully completed copy of pages

2 and 3 of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration. No information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

At least one member of a complaint subcommittee shall be present when the subcommittee's report is made to a review panel. Complaint subcommittee members may also attend by teleconference when necessary.

REVIEW PANELS:

The chair of the review panel shall ensure that at least one copy of the relevant page of the complaint intake form is completed and provided to the Registrar at the conclusion of the review panel hearing.

MEETING MATERIALS:

All material prepared for meetings of the Ontario Judicial Council are confidential and shall not be disclosed or made public.

When a complaint subcommittee has indicated that it is ready to make a report to a review panel, the Registrar will prepare and circulate a draft case summary and a draft letter to the complainant to the members of the complaint subcommittee making the report and the members of the review panel assigned to hear the complaint subcommittee's report. The draft case summary and draft letter to the complainant will be circulated to the members for their review at least a week prior to the date of the scheduled Judicial Council meeting. Amendments to the draft case summary and the draft letter to the complainant may be made after discussion by the Judicial Council members at the meeting held to consider the complaint subcommittee's recommendation on individual complaint files.

The draft and final case summary and the draft letter to the complainant which is submitted for approval will not contain any information which would identify either the complainant or the subject judge.

A copy of the final case summary is filed in every closed complaint file together with a copy of the final letter to the complainant advising of the disposition of the complaint.

NOTICE OF DECISION – NOTIFICATION OF PARTIES:

After the draft letter to the complainant has been approved, by the investigating complaint subcommittee and the review panel, it is prepared in final form and sent to the complainant.

Complainants, in cases where their complaint is dismissed, are given notice of the decision of the OJC, with reasons, as required by subsection 51.4(2) of the *Courts of Justice Act*.

The OJC has distributed a waiver form for all judges to sign and complete, instructing the OJC of the circumstances in which an individual judge wishes to be advised of complaints made against them, which are dismissed. The OJC has also distributed an address form for all judges to sign and complete, instructing the OJC of the address to which correspondence about complaint matters should be sent.

Judges who had been asked for a response to the complaint, or who, to the knowledge of the OJC are otherwise aware of the complaint, will be contacted by telephone after the complaint has been dealt with and advised of the decision of the OJC. A letter confirming the disposition of the complaint will also be sent to the judge, in accordance with his/her instructions.

CLOSING FILES:

Once the parties have been notified of the OJC's decision, the original copy of the complaint file is marked "closed" and stored in a locked filing cabinet. Complaint subcommittee members return their copies of the file to the Registrar to be destroyed or advise, in writing, that they have destroyed their copy of the complaint file. If a member's copy of the complaint file, or written notice of the file's destruction, is not received within two weeks after the review panel meeting, OJC staff will contact the complaint subcommittee member, to remind him or her to destroy his or her copy of the complaint file, and provide written notice, or arrange to have the file returned to the OJC, by courier, for shredding.



APPENDIX-C

ONTARIO COURT OF JUSTICE
CONTINUING EDUCATION PLAN

ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

The Continuing Education Plan for the Ontario Court of Justice has the following goals:

1. Maintaining and developing professional competence.
2. Maintaining and developing social awareness.
3. Encouraging personal growth.

The Plan provides each judge with an opportunity of having approximately ten days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, *Charter of Rights*, skills training and social context. While many of the programs attended by the judges of the Ontario Court of Justice are developed and presented by the judges of the Court themselves, frequent use is made of outside resources in the planning and presentation of programs. Lawyers, government and law enforcement officials, academics, and other professionals have been used extensively in most education programs. In addition, judges are encouraged to identify and attend external programs of interest and benefit to themselves and the Court.

EDUCATION SECRETARIAT

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Justice as Chair (ex officio), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. The Ontario Court of Justice's research counsel serve as consultants. The Secretariat meets approximately five times per year to discuss matters pertaining to education and reports to the Chief Justice. The mandate and goals of the Education Secretariat are as follows:

The Education Secretariat is committed to the importance of education in enhancing professional excellence.

It is the mandate of the Education Secretariat to promote educational experiences that encourage judges to be reflective about their professional practices, to increase their substantive knowledge, and to engage in ongoing, lifelong and self-directed learning.

To meet the needs of an independent judiciary, the Education Secretariat will:

- Promote education as a way to encourage excellence; and
- Support and encourage programs which maintain and enhance social, ethical and cultural sensitivity.

The goals of the Education Secretariat are:

1. To stimulate continuing professional and personal development;
2. To ensure that education is relevant to the needs and interests of the provincial judiciary;
3. To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure and substantive law;
4. To increase knowledge and awareness of community and social services structures and resources that may assist and complement educational programs and the work of the courts;
5. To foster the active recruitment and involvement of the judiciary at all stages of program conceptualization, development, planning, delivery and evaluation;
6. To promote an understanding of judicial development;
7. To facilitate the desire for life-long learning and reflective practices;

APPENDIX - C

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

8. To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and
9. To evaluate the educational process and programs.

The Education Secretariat provides administrative and logistical support for the education programs presented within the Ontario Court of Justice. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

The current education plan for judges of the Ontario Court of Justice is divided into two parts;

1. First Year Education,
2. Continuing Education.

1. FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice is provided with certain texts and materials upon appointment including:

- *Commentaries on Judicial Conduct*
(Canadian Judicial Council)
- *Martin's Criminal Code*
- *Family Law Statutes of the Ontario Court of Justice*
- *The Conduct of a Trial*
- *Judge's Manual*
- *Family Law Rules*
- *Writing Reasons*
- *Ethical Principles for Judges*
(Canadian Judicial Council)

The Ontario Court of Justice organizes a one-day education program for newly appointed judges shortly after their appointment which deals with practical matters relating to the transition to the bench, including judicial conduct and judicial ethics, courtroom demeanour and behaviour, available resources, etc. This program is presented at the Office of the Chief Justice twice a year.

Upon appointment, each new judge is assigned by the Chief Justice to one of the seven regions of the Province. The Regional Senior Judge for that region is then responsible for assigning and scheduling the new judge within the region. Depending on the new judge's background and experience at the time of appointment, the Regional Senior Judge will assign the newly-appointed judge for a period of time (usually several weeks prior to swearing-in) to observe senior, more experienced judges and/or specific courtrooms. During this period, the new judge sits in the courtroom, attends in chambers with experienced judges and has an opportunity to become familiar with their new responsibilities.

During the first year following appointment, or soon thereafter as is possible, new judges attend the New Judges' Training Program presented by the Canadian Association of Provincial Court judges (C.A.P.C.J.) at Carling Lake in the Province of Quebec. This intensive one-week program is practical in nature and is oriented principally to the area of criminal law, with some reference to areas of family law. Judges in the first year of appointment are also encouraged to attend all education programs relating to their field(s) of specialization presented by the Ontario Court of Justice (These programs are outlined under the heading "Continuing Education").

Each judge at the time of appointment is invited to participate in a mentoring program which has been developed within the Ontario Court of Justice by the Ontario Conference of Judges. New judges also have the opportunity (as do all judges) to discuss matters of concern or interest with their peers at any time.

All judges from the date of their appointment have equal access to a number of resources that impact directly or indirectly upon the work of the Ontario Court of Justice, including legal texts, case reporting services, the Ontario Court of Justice Research Centre (discussed below), computer courses and courses in Quicklaw (a computer law database and research facility).

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

2. CONTINUING EDUCATION

Continuing education programs presented to judges of the Ontario Court of Justice are of two types;

- 1) Programs presented by the Ontario Conference of Judges usually of particular interest to judges in the fields of criminal or family law respectively;
- 2) Programs presented by the Education Secretariat.

I. PROGRAMS PRESENTED BY THE ONTARIO CONFERENCE OF JUDGES

The programs presented by the Ontario Conference of Judges constitute the **Core Program** of the Ontario Court of Justice education programming. The Ontario Conference of Judges has two Education Committees (criminal and family) composed of a number of judges. The chair of each committee is nominated by the Ontario Conference of Judges to be on the Education Secretariat. These committees meet as required and work throughout the year on the planning, development and presentation of the core education programs.

The Ontario Conference of Judges presents three education programs in the area of family law, one each in January (the Judicial Development Institute), May (in conjunction with the Annual meeting of the Court) and September. Generally speaking, the principal topics are a) Child Welfare, and b) Family Law (custody, access and support). Additional topics involving skills development, case management, legislative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days duration and is open to any judge who spends a significant amount of his or her time presiding over family law matters.

There are also two major criminal law programs presented each year.

- a) A three-day Regional Seminar is organized in October and November of each year at four regional locations. These seminars customarily focus on areas of sentencing, Youth Criminal Justice and the law of evidence, although a variety of other topics may also be included. Similar programs are presented in each of the four regional locations.

- b) A two and a half day education seminar is presented in the month of May in conjunction with the annual meeting of the Court. All judges presiding in criminal law courts are entitled and encouraged to attend these seminars.

II. SECRETARIAT PROGRAMS

The programs that are planned and presented by the Education Secretariat tend to deal with subject matter that is neither predominantly criminal nor family, or that can be presented on more than one occasion to different groups of judges.

1. JUDGMENT WRITING: This two-day seminar is presented to a group of approximately 10 judges at a time as funding permits. Lately two seminars have been presented in February of each year at the Office of the Chief Justice by Professor Edward Berry of the University of Victoria.

In the 1997/98 fiscal year the Education Secretariat contracted with Professor Berry to prepare a text in judgment writing for all judges of the Court. That text has now been prepared and distributed to all judges of the Court and is now in its second edition.

2. PRE-RETIREMENT SEMINARS: Intended to assist judges in their retirement planning (together with their spouses), this two and one-half day program deals with the transition from the bench to retirement and is presented in Toronto whenever numbers warrant.
3. JUDICIAL COMMUNICATION PROGRAM: In March, 1998, the Ontario Court of Justice retained the services of Professor Gordon Zimmerman together with Professor Alayne Casteel of the University of Nevada to present a training program on Judicial Communication. The program involved directed activities and discussion on verbal and non-verbal communications, listening and related problems. Individual judges were videotaped and their communication techniques were critiqued in the course of the program. The program, which was presented to 25 Ontario Court of Justice judges, was intended to serve as a pilot project for future seminars on judicial communication, which will be presented

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as funding and scheduling permits. The Secretariat put on the first of these seminars in March, 2000. It was attended by 16 judges of the Ontario Court of Justice and 2 from the Canadian Association of Provincial Court Judges who were invited to observe and participate in order to assess the program for use in other provinces. This program was organized, developed and presented by Professor Neil Gold and his associate Frank Borowicz who adapted the pilot project to the specific role of a trial judge in a Canadian court. The program was presented again in March, 2002 to another 21 judges of the Ontario Court of Justice.

From June 2 to June 4, 2003 the Court in Partnership with the National Judicial Institute developed a Courtroom Communications Workshop presented at Stratford. The focus of the seminar was on communications skills in the courtroom. Judges learned and practiced specific techniques in realistic exercises designed to simulate difficult courtroom situations. They had an opportunity to learn about their own communications style and how to improve it, with coaches from the theatre and other communication professionals. Twelve judges from the Court were selected to attend the program together with an equal number of federally-appointed judges.

4. **SOCIAL CONTEXT PROGRAMS:** The Ontario Court of Justice has presented significant programs dealing with social context. The first such program, entitled *Gender Equity*, was presented in the fall of 1992. That program used professional and community resources in its planning and presentation phases. A number of Ontario Court of Justice judges were trained as facilitators for the purposes of the program during the planning process, which lasted over 12 months. Extensive use was made of videos and printed materials which form a permanent reference. The facilitator model has since been used in a number of Ontario Court of Justice Education Programs.

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled *The Court in an Inclusive Society*, was intended to provide

information about the changing nature of our society, to determine the impact of the changes and to equip the Court to respond better to those changes. A variety of pedagogical techniques including large and small group sessions were used in the course of the program. A group of judge facilitators were specifically trained for this program which was presented following significant community consultation.

In September 2000 the Ontario Conference of Judges and the Canadian Association of Provincial Court Judges met in Ottawa for a combined conference which covered, *inter alia*, poverty issues and, in addition, issues related to aboriginal justice.

At the Court's Annual Meeting in 2003, the theme of the education program was "Access to Justice". The vehicle of a play followed by a panel discussion was used to describe issues of literacy, race, poverty, neglect, abuse and violence in the home affecting access to justice. Another session used lectures, videos, panel discussions and small group work to explore the issue of literacy and the courts in a meaningful way.

As part of the Court's commitment to social context education, the Ontario Conference of Judges has created an *ad hoc* equality committee to ensure that social context issues are included and addressed on an on-going basis in the education programs of the associations.

5. **UNIVERSITY EDUCATION PROGRAM.** This program takes place over a five-day period in the spring in a university or similar setting. It provides an opportunity for approximately 30–35 judges to deal in depth with criminal law education topics in a more academic context. The same program, with some modification, is presented each year over a three year period to enable a larger number of judges to receive the same benefits of the program.

III. EXTERNAL EDUCATION PROGRAMS

1. **FRENCH-LANGUAGE COURSES:** Judges of the Ontario Court of Justice who are proficient in French may attend courses presented by the

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Office of the Commissioner for Federal Judicial Affairs. The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of courses: (a) Terminology courses for francophone judges; (b) Terminology courses for anglophone (bilingual) judges.

2. OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including:

- Canadian Association of Provincial Court Judges
- National Judicial Institute
- Federation of Law Societies: Criminal (Substantive Law/Procedure/Evidence) & Family Law
- International Association of Juvenile and Family Court Magistrates
- Canadian Bar Association
- Criminal Lawyers' Association
- Advocate's Society Conference
- Ontario Association for Family Mediation/Mediation Canada
- Canadian Institute for the Administration of Justice
- International Association of Women Judges (Canadian Chapter)
- Ontario Family Court Clinic Conference
- Canadian Institute for Advanced Legal Studies (Cambridge Lectures)

The process involves an application by a judge to attend such programs, a peer selection committee, and a program appraisal. This program depends upon available funding as determined by the Education Secretariat on an annual basis.

The Education Secretariat has however established

a Conference Attendance Committee to consider applications by individual judges for funding to attend conferences/seminars/programs other than those presented by the Ontario Court of Justice. Funding, when provided, is usually less than 100% since it is designed to provide supplementary assistance to judges who are prepared to commit some of their own resources to attend.

3. COMPUTER COURSES: The Ontario Court of Justice, through a tendered contract with a training vendor previously organized a series of computer training courses for judges of the Ontario Court of Justice. These courses were organized according to skill level and geographic location and presented at different times throughout the Province. Judges typically attended at the offices of the training vendor for courses in computer operation, word-processing and data storage and retrieval. Other courses were and are presented in the use of Quicklaw (the computer law database and research facility).

As the Desktop Computer Implementation (D.C.I.) Project was implemented across the justice system in Ontario, starting in the summer of 1998, computer training for judges was significantly increased by the Project in order to ensure appropriate levels of computer literacy for all members of the Court.

4. NATIONAL JUDICIAL INSTITUTE (N.J.I.): The Ontario Court of Justice through its Education Secretariat makes a financial contribution to the operation of the National Judicial Institute. The N.J.I., based in Ottawa, sponsors a number of education programs across the country for federally and provincially appointed judges. Individual judges have attended and will continue to attend N.J.I. programs in the future, depending on location and subject matter. The Chief Justice is a member of the Board of the N.J.I.

The Ontario Court of Justice has entered into a joint venture with the N.J.I. which resulted in the hiring of an Education Director for the Ontario Court of Justice who is also responsible for the

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coordination and development of programs for Provincial judges in other provinces.

In September, 2002 the Ontario Court of Justice and the National Judicial Institute jointly presented a conference on Child Welfare Law which was attended by both federal and provincial judges from across the country.

administrative/management issues, some also have an educational component. Such is the case, for example, with the northern regional meeting in which judges of the Northeast and Northwest Regions meet together and deal with educational issues of special interest to the north, such as judicial isolation, travel and aboriginal justice.

IV. OTHER EDUCATIONAL RESOURCES

1. JUDICIAL RESEARCH CENTRE: Judges of the Ontario Court of Justice have access to the Ontario Court of Justice Research Centre located at Old City Hall in Toronto. The Research Centre, a law library and computer research facility, is staffed by three research counsel together with support staff and is accessible in person, by telephone, E- mail or fax. The Research Centre responds to specific requests from judges for research and, in addition, provides updates with respect to legislation and relevant case law through its regular publication *'Items of Interest'*.
2. RECENT DEVELOPMENTS: The Honourable Mr. Justice Ian MacDonnell also provides to judges of the Ontario Court of Justice his summary and comments on current criminal law decisions of the Ontario Court of Appeal and of the Supreme Court of Canada in a publication entitled *'Recent Developments'*
3. SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.
4. REGIONAL MEETINGS: The current seven regions of the Court have annual regional meetings. While these meetings principally provide an opportunity to deal with regional

5. In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected *inter alia* through continuing peer discussions and individual reading and research.



APPENDIX-D

COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

The following excerpt from the *Courts of Justice Act*, c.43 should not be relied on as the authoritative text. The authoritative text is set out in the official volumes and in office consolidations printed by Publications Ontario.

COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

SECTION 49

JUDICIAL COUNCIL

49. (1) The Ontario Judicial Council is continued under the name Ontario Judicial Council in English and Conseil de la magistrature de l'Ontario in French.

COMPOSITION

- (2) The Judicial Council is composed of,
 - (a) the Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice;
 - (b) the Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, and the Associate Chief Justice of the Ontario Court of Justice;
 - (c) a regional senior judge of the Ontario Court of Justice, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation;
 - (d) two judges of the Ontario Court of Justice, appointed by the Chief Justice;
 - (e) the Treasurer of The Law Society of Upper Canada, or another bencher of the Law Society who is a lawyer, designated by the Treasurer;
 - (f) a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society;
 - (g) four persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

TEMPORARY MEMBERS

(3) The Chief Justice of the Ontario Court of Justice may appoint a judge of that division to be a temporary member of the Judicial Council in the place of another provincial judge, for the purposes of dealing with a complaint, if the requirements of subsections (13), (15), (17), (19) and (20) cannot otherwise be met.

CRITERIA

(4) In the appointment of members under clauses (2) (d), (f) and (g), the importance of reflecting, in the composition of the Judicial Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

TERM OF OFFICE

(5) The regional senior judge who is appointed under clause (2) (c) remains a member of the Judicial Council until he or she ceases to hold office as a regional senior judge.

Same

(6) The members who are appointed under clauses (2) (d), (f) and (g) hold office for four-year terms and shall not be reappointed.

STAGGERED TERMS

(7) Despite subsection (6), one of the members first appointed under clause (2) (d) and two of the members first appointed under clause (2) (g) shall be appointed to hold office for six-year terms.

CHAIR

(8) The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the meetings and hearings of the Judicial Council that deal with complaints against particular judges and its meetings held for the purposes of section 45 and subsection 47 (5).

Same

(9) The Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, shall chair all other meetings and hearings of the Judicial Council.

Same

(10) The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

OPEN AND CLOSED HEARINGS AND MEETINGS

(11) The Judicial Council's hearings and meetings under sections 51.6 and 51.7 shall be open to the public, unless subsection 51.6 (7) applies; its other hearings and meetings may be conducted in private, unless this Act provides otherwise.

VACANCIES

(12) Where a vacancy occurs among the members appointed under clause (2) (d), (f) or (g), a new member similarly qualified may be appointed for the remainder of the term.

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COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

QUORUM

(13) The following quorum rules apply, subject to subsections (15) and (17):

1. Eight members, including the chair, constitute a quorum.
2. At least half the members present must be judges and at least four must be persons who are not judges.

REVIEW PANELS

(14) The Judicial Council may establish a panel for the purpose of dealing with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

Same

(15) The following rules apply to a panel established under subsection (14):

1. The panel shall consist of two provincial judges other than the Chief Justice, a lawyer and a person who is neither a judge nor a lawyer.
2. One of the judges, as designated by the Judicial Council, shall chair the panel.
3. Four members constitute a quorum.

HEARING PANELS

(16) The Judicial Council may establish a panel for the purpose of holding a hearing under section 51.6 and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

Same

(17) The following rules apply to a panel established under subsection (16):

1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.
2. At least one member must be a person who is neither a judge nor a lawyer.
3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.
4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.

5. All the members of the panel constitute a quorum.

CHAIR

(18) The chair of a panel established under subsection (14) or (16) is entitled to vote, and may cast a second deciding vote if there is a tie.

PARTICIPATION IN STAGES OF PROCESS

(19) The members of the subcommittee that investigated a complaint shall not,

- (a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or
- (b) participate in a hearing of the complaint under section 51.6.

Same

(20) The members of the Judicial Council who dealt with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) shall not participate in a hearing of the complaint under section 51.6.

EXPERT ASSISTANCE

(21) The Judicial Council may engage persons, including counsel, to assist it.

SUPPORT SERVICES

(22) The Judicial Council shall provide support services, including initial orientation and continuing education, to enable its members to participate effectively, devoting particular attention to the needs of the members who are neither judges nor lawyers and administering a part of its budget for support services separately for that purpose.

Same

(23) The Judicial Council shall administer a part of its budget for support services separately for the purpose of accommodating the needs of any members who have disabilities.

CONFIDENTIAL RECORDS

(24) The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public.

Same

(25) Subsection (24) applies whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person.

COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

EXCEPTIONS

- (26) Subsection (24) does not apply to information and documents,
- (a) that this Act requires the Judicial Council to disclose; or
- (b) that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

PERSONAL LIABILITY

(27) No action or other proceeding for damages shall be instituted against the Judicial Council, any of its members or employees or any person acting under its authority for any act done in good faith in the execution or intended execution of the Council's or person's duty.

REMUNERATION

(28) The members who are appointed under clause (2) (g) are entitled to receive the daily remuneration that is fixed by the Lieutenant Governor in Council.

SECTION 50

COMPLAINT AGAINST CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

- 50. (1) If the Chief Justice of the Ontario Court of Justice is the subject of a complaint,
- (a) the Chief Justice of Ontario shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of;
- (b) the Associate Chief Justice of the Ontario Court of Justice shall chair meetings and hearings of the Council instead of the Chief Justice of the Ontario Court of Justice, and make appointments under subsection 49 (3) instead of the Chief Justice, until the complaint is finally disposed of; and
- (c) any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice under clause 51.4 (13) (b) or 51.4 (18) (c), subclause 51.5 (8) (b) (ii) or clause 51.5 (10) (b) shall be made to the Chief Justice of the Superior Court of Justice instead of to the Chief Justice of the Ontario Court of Justice.

SUSPENSION OF CHIEF JUSTICE

(2) If the Chief Justice of the Ontario Court of Justice is suspended under subsection 51.4 (12),

- (a) complaints that would otherwise be referred to the Chief Justice of the Ontario Court of Justice under clauses 51.4 (13) (b) and 51.4 (18) (c), subclause 51.5 (8) (b) (ii) and clause 51.5 (10) (b) shall be referred to the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of; and
- (b) annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of.

COMPLAINT AGAINST ASSOCIATE CHIEF JUSTICE OR REGIONAL SENIOR JUDGE

(3) If the Associate Chief Justice of the Ontario Court of Justice or the regional senior judge appointed under clause 49 (2) (c) is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or regional senior judge, as the case may be, until the complaint is finally disposed of.

SECTION 51

PROVISION OF INFORMATION TO PUBLIC

51. (1) The Judicial Council shall provide, in court-houses and elsewhere, information about itself and about the justice system, including information about how members of the public may obtain assistance in making complaints.

Same

(2) In providing information, the Judicial Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities.

ASSISTANCE TO PUBLIC

(3) Where necessary, the Judicial Council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints.

COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

TELEPHONE ACCESS

(4) The Judicial Council shall provide province-wide free telephone access, including telephone access for the deaf, to information about itself and its role in the justice system.

PERSONS WITH DISABILITIES

(5) To enable persons with disabilities to participate effectively in the complaints process, the Judicial Council shall ensure that their needs are accommodated, at the Council's expense, unless it would impose undue hardship on the Council to do so, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

ANNUAL REPORT

(6) After the end of each year, the Judicial Council shall make an annual report to the Attorney General on its affairs, in English and French, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the judge or the complainant.

TABLING

(7) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly.

SECTION 51.1

RULES

51.1 (1) The Judicial Council shall establish and make public rules governing its own procedures, including the following:

1. Guidelines and rules of procedure for the purpose of section 45.
2. Guidelines and rules of procedure for the purpose of subsection 51.4 (21).
3. Guidelines and rules of procedure for the purpose of subsection 51.4 (22).
4. If applicable, criteria for the purpose of subsection 51.5 (2).
5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5 (13).

6. Rules of procedure for the purpose of subsection 51.6 (3).
7. Criteria for the purpose of subsection 51.6 (7).
8. Criteria for the purpose of subsection 51.6 (8).
9. Criteria for the purpose of subsection 51.6 (10).

REGULATIONS ACT

(2) The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

SECTIONS 28, 29 AND 33 OF SPPA

(3) Sections 28, 29 and 33 of the *Statutory Powers Procedure Act* do not apply to the Judicial Council.

SECTION 51.2

USE OF OFFICIAL LANGUAGES OF COURTS

51.2 (1) The information provided under subsections 51 (1), (3) and (4) and the matters made public under subsection 51.1 (1) shall be made available in English and French.

Same

(2) Complaints against provincial judges may be made in English or French.

Same

(3) A hearing under section 51.6 shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request,

- (a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;
- (b) to be provided with the assistance of an interpreter at the hearing; and
- (c) to be provided with simultaneous interpretation into French of the English portions of the hearing.

Same

(4) Subsection (3) also applies to mediations conducted under section 51.5 and to the Judicial Council's consideration of the question of compensation under section 51.7, if subsection 51.7 (2) applies.

COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

BILINGUAL HEARING OR MEDIATION

(5) The Judicial Council may direct that a hearing or mediation to which subsection (3) applies be conducted bilingually, if the Council is of the opinion that it can be properly conducted in that manner.

PART OF HEARING OR MEDIATION

(6) A directive under subsection (5) may apply to a part of the hearing or mediation, and in that case subsections (7) and (8) apply with necessary modifications.

Same

(7) In a bilingual hearing or mediation,

- (a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- (b) documents may be filed in either language;
- (c) in the case of a mediation, discussions may take place in either language;
- (d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

Same

(8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

SECTION 51.3

COMPLAINTS

51.3 (1) Any person may make a complaint to the Judicial Council alleging misconduct by a provincial judge.

Same

(2) If an allegation of misconduct against a provincial judge is made to a member of the Judicial Council, it shall be treated as a complaint made to the Judicial Council.

Same

(3) If an allegation of misconduct against a provincial judge is made to any other judge or to the Attorney General, the other judge, or the Attorney General, as the case may be, shall provide the person making the allegation

with information about the Judicial Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Judicial Council.

CARRIAGE OF MATTER

(4) Once a complaint has been made to the Judicial Council, the Council has carriage of the matter.

INFORMATION RE COMPLAINT

(5) At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it.

SECTION 51.4

REVIEW BY SUBCOMMITTEE

51.4 (1) A complaint received by the Judicial Council shall be reviewed by a subcommittee of the Council consisting of a provincial judge other than the Chief Justice and a person who is neither a judge nor a lawyer.

ROTATION OF MEMBERS

(2) The eligible members of the Judicial Council shall all serve on the subcommittee on a rotating basis.

DISMISSAL

(3) The subcommittee shall dismiss the complaint without further investigation if, in the subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process.

INVESTIGATION

(4) If the complaint is not dismissed under subsection (3), the subcommittee shall conduct such investigation as it considers appropriate.

EXPERT ASSISTANCE

(5) The subcommittee may engage persons, including counsel, to assist it in its investigation.

INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

NON-APPLICATION OF SPPA

(7) The *Statutory Powers Procedure Act* does not apply to the subcommittee's activities.

COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

INTERIM RECOMMENDATIONS

(8) The subcommittee may recommend to a regional senior judge the suspension, with pay, of the judge who is the subject of the complaint, or the judge's reassignment to a different location, until the complaint is finally disposed of.

Same

(9) The recommendation shall be made to the regional senior judge appointed for the region to which the judge is assigned, unless that regional senior judge is a member of the Judicial Council, in which case the recommendation shall be made to another regional senior judge.

POWER OF REGIONAL SENIOR JUDGE

(10) The regional senior judge may suspend or reassign the judge as the subcommittee recommends.

DISCRETION

(11) The regional senior judge's discretion to accept or reject the subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice.

EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

(12) If the complaint is against the Chief Justice of the Ontario Court of Justice, an associate chief justice of the Ontario Court of Justice or the regional senior judge who is a member of the Judicial Council, any recommendation under subsection (8) in connection with the complaint shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the subcommittee recommends.

SUBCOMMITTEE'S DECISION

(13) When its investigation is complete, the subcommittee shall,

- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Justice;
- (c) refer the complaint to a mediator in accordance with section 51.5; or
- (d) refer the complaint to the Judicial Council, with or without recommending that it hold a hearing under section 51.6.

Same

(14) The subcommittee may dismiss the complaint or refer it to the Chief Justice or to a mediator only if both members agree; otherwise, the complaint shall be referred to the Judicial Council.

CONDITIONS, REFERENCE TO CHIEF JUSTICE

(15) The subcommittee may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice.

REPORT

(16) The subcommittee shall report to the Judicial Council, without identifying the complainant or the judge who is the subject of the complaint, its disposition of any complaint that is dismissed or referred to the Chief Justice or to a mediator.

POWER OF JUDICIAL COUNCIL

(17) The Judicial Council shall consider the report, in private, and may approve the subcommittee's disposition or may require the subcommittee to refer the complaint to the Council.

Same

(18) The Judicial Council shall consider, in private, every complaint referred to it by the subcommittee, and may,

- (a) hold a hearing under section 51.6;
- (b) dismiss the complaint;
- (c) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection (15); or
- (d) refer the complaint to a mediator in accordance with section 51.5.

NON-APPLICATION OF SPPA

(19) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (17) and (18).

NOTICE TO JUDGE AND COMPLAINANT

(20) After making its decision under subsection (17) or (18), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

GUIDELINES AND RULES OF PROCEDURE

(21) In conducting investigations, in making recommendations under subsection (8) and in making decisions under subsections (13) and (15), the subcommittee shall follow the Judicial Council's guidelines and rules of procedure established under subsection 51.1 (1).

Same

(22) In considering reports and complaints and making decisions under subsections (17) and (18), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

SECTION 51.5

MEDIATION

51.5 (1) The Judicial Council may establish a mediation process for complainants and for judges who are the subject of complaints.

CRITERIA

(2) If the Judicial Council establishes a mediation process, it must also establish criteria to exclude from the process complaints that are inappropriate for mediation.

Same

(3) Without limiting the generality of subsection (2), the criteria must ensure that complaints are excluded from the mediation process in the following circumstances:

1. There is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable.
2. The complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*.
3. The public interest requires a hearing of the complaint.

LEGAL ADVICE

(4) A complaint may be referred to a mediator only if the complainant and the judge consent to the referral, are able to obtain independent legal advice and have had an opportunity to do so.

TRAINED MEDIATOR

(5) The mediator shall be a person who has been trained in mediation and who is not a judge, and if the mediation is conducted by two or more persons acting together, at least one of them must meet those requirements.

IMPARTIALITY

(6) The mediator shall be impartial.

EXCLUSION

(7) No member of the subcommittee that investigated the complaint and no member of the Judicial Council who dealt with the complaint under subsection 51.4 (17) or (18) shall participate in the mediation.

REVIEW BY COUNCIL

(8) The mediator shall report the results of the mediation, without identifying the complainant or the judge who is the subject of the complaint, to the Judicial Council, which shall review the report, in private, and may,

- (a) approve the disposition of the complaint; or
- (b) if the mediation does not result in a disposition or if the Council is of the opinion that the disposition is not in the public interest,
 - (i) dismiss the complaint,
 - (ii) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15), or
 - (iii) hold a hearing under section 51.6.

REPORT

(9) If the Judicial Council approves the disposition of the complaint, it may make the results of the mediation public, providing a summary of the complaint but not identifying the complainant or the judge.

REFERRAL TO COUNCIL

(10) At any time during or after the mediation, the complainant or the judge may refer the complaint to the Judicial Council, which shall consider the matter, in private, and may,

- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15); or
- (c) hold a hearing under section 51.6.

NON-APPLICATION OF SPPA

(11) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (8) and (10).

NOTICE TO JUDGE AND COMPLAINANT

(12) After making its decision under subsection (8) or (10), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

GUIDELINES AND RULES OF PROCEDURE

(13) In reviewing reports, considering matters and making decisions under subsections (8) and (10), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

SECTION 51.6

ADJUDICATION BY COUNCIL

51.6 (1) When the Judicial Council decides to hold a hearing, it shall do so in accordance with this section.

APPLICATION OF SPPA

(2) The *Statutory Powers Procedure Act*, except section 4 and subsection 9 (1), applies to the hearing.

RULES OF PROCEDURE

(3) The Judicial Council's rules of procedure established under subsection 51.1 (1) apply to the hearing.

COMMUNICATION RE SUBJECT-MATTER OF HEARING

(4) The members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate.

EXCEPTION

(5) Subsection (4) does not preclude the Judicial Council from engaging counsel to assist it in accordance with subsection 49 (21), and in that case the nature of the advice given by counsel shall be communicated to the parties so that they may make submissions as to the law.

PARTIES

(6) The Judicial Council shall determine who are the parties to the hearing.

EXCEPTION, CLOSED HEARING

(7) In exceptional circumstances, if the Judicial Council determines, in accordance with the criteria established under subsection 51.1 (1), that the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private.

DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

(8) If the hearing was held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1 (1) that there are exceptional circumstances, order that the judge's name not be disclosed or made public.

ORDERS PROHIBITING PUBLICATION

(9) If the complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of a complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or witness, as the case may be.

PUBLICATION BAN

(10) In exceptional circumstances and in accordance with the criteria established under subsection 51.1 (1), the Judicial Council may make an order prohibiting, pending the disposition of a complaint, the publication of information that might identify the judge who is the subject of the complaint.

DISPOSITIONS

(11) After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may,

- (a) warn the judge;
- (b) reprimand the judge;
- (c) order the judge to apologize to the complainant or to any other person;
- (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- (e) suspend the judge with pay, for any period;
- (f) suspend the judge without pay, but with benefits, for a period up to thirty days; or

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- (g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8.

Same

(12) The Judicial Council may adopt any combination of the dispositions set out in clauses (11) (a) to (f).

DISABILITY

(13) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

APPLICATION OF SUBS. (13)

- (14) Subsection (13) applies if,
- (a) the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and
 - (b) the Judicial Council dismisses the complaint or makes a disposition under clauses (11) (a) to (f).

UNDUE HARDSHIP

(15) Subsection (13) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

OPPORTUNITY TO PARTICIPATE

(16) The Judicial Council shall not make an order under subsection (13) against a person without ensuring that the person has had an opportunity to participate and make submissions.

CROWN BOUND

(17) An order made under subsection (13) binds the Crown.

REPORT TO ATTORNEY GENERAL

(18) The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition, subject to any order made under subsection 49 (24), and the Attorney General may make the report public if of the opinion that this would be in the public interest.

NON-IDENTIFICATION OF PERSONS

(19) The following persons shall not be identified in the report:

- 1. A complainant or witness at whose request an order was made under subsection (9).
- 2. The judge, if the hearing was conducted in private, unless the Judicial Council orders that the judge's name be disclosed.

CONTINUING PUBLICATION BAN

(20) If an order was made under subsection (10) and the Judicial Council dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent.

SECTION 51.7

COMPENSATION

51.7 (1) When the Judicial Council has dealt with a complaint against a provincial judge, it shall consider whether the judge should be compensated for his or her costs for legal services incurred in connection with all the steps taken under sections 51.4, 51.5 and 51.6 and this section in relation to the complaint.

CONSIDERATION OF QUESTION COMBINED WITH HEARING

(2) If the Judicial Council holds a hearing into the complaint, its consideration of the question of compensation shall be combined with the hearing.

PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

(3) The Judicial Council's consideration of the question of compensation shall take place in public if there was a public hearing into the complaint, and otherwise shall take place in private.

RECOMMENDATION

(4) If the Judicial Council is of the opinion that the judge should be compensated, it shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation.

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Same

(5) If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount.

DISCLOSURE OF NAME

(6) The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the name unless there was a public hearing into the complaint or the Council has otherwise made the judge's name public.

AMOUNT OF COMPENSATION

(7) The amount of compensation recommended under subsection (4) or (5) may relate to all or part of the judge's costs for legal services, and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

PAYMENT

(8) The Attorney General shall pay compensation to the judge in accordance with the recommendation.

SECTION 51.8

REMOVAL FOR CAUSE

51.8 (1) A provincial judge may be removed from office only if,

- (a) a complaint about the judge has been made to the Judicial Council; and
- (b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),
 - (ii) conduct that is incompatible with the due execution of his or her office, or

- (iii) failure to perform the duties of his or her office.

TABLING OF RECOMMENDATION

(2) The Attorney General shall table the recommendation in the Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

ORDER FOR REMOVAL

(3) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Assembly.

APPLICATION

(4) This section applies to provincial judges who have not yet attained retirement age and to provincial judges whose continuation in office after attaining retirement age has been approved under subsection 47 (3), (4) or (5).

TRANSITION

(5) A complaint against a provincial judge that is made to the Judicial Council before the day section 16 of the *Courts of Justice Statute Law Amendment Act*, 1994 comes into force, and considered at a meeting of the Judicial Council before that day, shall be dealt with by the Judicial Council as it was constituted immediately before that day and in accordance with section 49 of this *Act* as it read immediately before that day.

SECTION 51.9

STANDARDS OF CONDUCT

51.9 (1) The Chief Justice of the Ontario Court of Justice may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall ensure that the standards of conduct are made available to the public, in English and French, when they have been approved by the Judicial Council.

GOALS

(3) The following are among the goals that the Chief Justice may seek to achieve by implementing standards of conduct for judges:

1. Recognizing the independence of the judiciary.
2. Maintaining the high quality of the justice system and ensuring the efficient administration of justice.
3. Enhancing equality and a sense of inclusiveness in the justice system.
4. Ensuring that judges' conduct is consistent with the respect accorded to them.
5. Emphasizing the need to ensure the professional and personal development of judges and the growth of their social awareness through continuing education.

SECTION 51.10

CONTINUING EDUCATION

51.10 (1) The Chief Justice of the Ontario Court of Justice shall establish a plan for the continuing education of provincial judges, and shall implement the plan when it has been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Judicial Council.

GOALS

- (3) Continuing education of judges has the following goals:
 1. Maintaining and developing professional competence.
 2. Maintaining and developing social awareness.
 3. Encouraging personal growth.

SECTION 51.11

PERFORMANCE EVALUATION

51.11 (1) The Chief Justice of the Ontario Court of Justice may establish a program of performance evaluation for provincial judges, and may implement the program when it has been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall make the existence of the program of performance evaluation public when it has been approved by the Judicial Council.

GOALS

(3) The following are among the goals that the Chief Justice may seek to achieve by establishing a program of performance evaluation for judges:

1. Enhancing the performance of individual judges and of judges in general.
2. Identifying continuing education needs.
3. Assisting in the assignment of judges.
4. Identifying potential for professional development.

SCOPE OF EVALUATION

(4) In a judge's performance evaluation, a decision made in a particular case shall not be considered.

CONFIDENTIALITY

(5) A judge's performance evaluation is confidential and shall be disclosed only to the judge, his or her regional senior judge, and the person or persons conducting the evaluation.

INADMISSIBILITY, EXCEPTION

(6) A judge's performance evaluation shall not be admitted in evidence before the Judicial Council or any court or other tribunal unless the judge consents.

APPLICATION OF SUBSS. (5), (6)

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation.

SECTION 51.12

CONSULTATION

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Justice of the Ontario Court of Justice shall consult with judges of that court and with such other persons as he or she considers appropriate.

SECTION 87

MASTERS

87.—(1) Every person who was a master of the Supreme Court before the 1st day of September, 1990 is a master of the Superior Court of Justice.

JURISDICTION

(2) Every master has the jurisdiction conferred by the rules of court in proceedings in the Superior Court of Justice.

APPLICATION OF SS. 44 TO 51.12

(3) Sections 44 to 51.12 apply to masters, with necessary modifications, in the same manner as to provincial judges.

EXCEPTION

(4) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to masters.

Same

(5) The right of a master to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

Same

(6) When the Judicial Council deals with a complaint against a master, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of

Justice shall designate the master who is to replace the judge.

2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

Same

(7) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to masters only if the Chief Justice of the Superior Court of Justice consents.

COMPENSATION

(8) Masters shall receive the same salaries, pension benefits, other benefits and allowances as provincial judges receive under the framework agreement set out in the Schedule to this Act.

SECTION 87.1

SMALL CLAIMS COURT JUDGES

87.1 (1) This section applies to provincial judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990.

FULL AND PART-TIME SERVICE

(2) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to provincial judges to whom this section applies.

CONTINUATION IN OFFICE

(3) The right of a provincial judge to whom this section applies to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

COMPLAINTS

(4) When the Judicial Council deals with a complaint against a provincial judge to whom this section applies, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

APPLICATION OF SS. 51.9, 51.10, 51.11

(5) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to provincial judges to whom this section applies only if the Chief Justice of the Superior Court of Justice consents.

SECTION 45

APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

45. (1) A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order under subsection (2).

DUTY OF JUDICIAL COUNCIL

(2) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

UNDUE HARDSHIP

(3) Subsection (2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

GUIDELINES AND RULES OF PROCEDURE

(4) In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

OPPORTUNITY TO PARTICIPATE

(5) The Judicial Council shall not make an order under subsection (2) against a person without ensuring that the person has had an opportunity to participate and make submissions.

CROWN BOUND

(6) The order binds the Crown.

SECTION 47

RETIREMENT

(1) Every provincial judge shall retire upon attaining the age of sixty-five years.

Same

(2) Despite subsection (1), a judge appointed as a full-time magistrate, judge of a juvenile and family court or master before December 2, 1968 shall retire upon attaining the age of seventy years.

CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief Justice of the Ontario Court of Justice, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years.

SAME, REGIONAL SENIOR JUDGES

(4) A regional senior judge of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Justice, continue in that office until his or her term (including any renewal under subsection 42 (9)) expires, or until he or she attains the age of seventy-five years, whichever comes first.

**SAME, CHIEF JUSTICE AND ASSOCIATE
CHIEF JUSTICES**

(5) A Chief Justice or associate chief justice of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Judicial Council, continue in that office until his or her term expires, or until he or she attains the age of seventy-five years, whichever comes first.

Same

(6) If the Judicial Council does not approve a Chief Justice or associate chief justice continuation in that office under subsection (5), his or her continuation in the office of provincial judge is subject to the approval of the Judicial Council and not as set out in subsection (3).

CRITERIA

(7) Decisions under subsections (3), (4), (5) and (6) shall be made in accordance with criteria developed by the Chief Justice and approved by the Judicial Council.

TRANSITION

(8) If the date of retirement under subsections (1) to (5) falls earlier in the calendar year than the day section 16 of the *Courts of Justice Statute Law Amendment Act, 1994* comes into force and the annual approval is outstanding on that day, the judge's continuation in office shall be dealt with in accordance with section 44 of this *Act* as it read immediately before that day.



PRÉJUDICE INJUSTIFIÉ

(3) Le paragraphe (2) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

DIRECTIVES ET RÈGLES DE PROCÉDURE

(4) Lorsqu'il traite des requêtes prévues au présent article, le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

PARTICIPATION

(5) Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe (2) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

LA COURONNE EST LIÉE

(6) L'ordonnance lie la Couronne.

ARTICLE 47

RETRAITE

(1) Chaque juge provincial prend sa retraite à l'âge de soixante-cinq ans.

Idem

(2) Malgré le paragraphe (1), le juge qui a été nommé magistrat, juge d'un tribunal de la famille et de la jeunesse ou protonotaire à plein temps avant le 2 décembre 1968 prend sa retraite à l'âge de soixante-dix ans.

MAINTIEN EN FONCTION DES JUGES

(3) Le juge qui atteint l'âge de la retraite peut, avec l'approbation annuelle du juge en chef de la Cour de justice de l'Ontario, continuer d'exercer ses fonctions en tant que juge à plein temps ou à temps partiel jusqu'à l'âge de soixante-quinze ans.

IDEM, JUGES PRINCIPAUX RÉGIONAUX

(4) Le juge principal régional de la Cour de justice de l'Ontario qui est toujours en fonction à l'âge de la retraite peut, avec l'approbation annuelle du juge en chef, continuer

CRITÈRES

(7) Les décisions visées aux paragraphes (3), (4), (5) et (6) sont prises conformément aux critères établis par le juge en chef et approuvés par le Conseil de la magistrature.

(8) Si la date de la retraite prévue aux paragraphes (1) à (5) est antérieure, dans l'année civile, au jour de l'entrée en vigueur de l'article 16 de la Loi de 1994 modifiant des lois *en ce qui concerne les tribunaux judiciaires* et que l'approbation annuelle est en suspens ce jour-là, le maintien en fonction du juge est traité conformément à l'article 44 de la présente loi tel qu'il existait immédiatement avant ce jour-là.



IDEM, JUGE EN CHEF ET JUGES EN CHEF ADJOINTS

d'exercer ses fonctions jusqu'à l'expiration de son mandat (y compris le renouvellement prévu au paragraphe 42 (9) ou jusqu'à l'âge de soixante-quinze ans, selon celui de ces deux événements qui se produit en premier.

47 (5) Le juge en chef ou le juge en chef adjoint de la Cour de justice de l'Ontario qui est toujours en fonction à l'âge de la retraite peut, avec l'approbation annuelle du Conseil de la magistrature, continuer d'exercer ses fonctions jusqu'à l'expiration de son mandat ou jusqu'à l'âge de soixante-quinze ans, selon celui de ces deux événements qui se produit en premier.

Idem

(6) Si le Conseil de la magistrature n'approuve pas le maintien en fonction d'un juge en chef ou d'un juge en chef adjoint aux termes du paragraphe (5), celui-ci peut, avec l'approbation du Conseil de la magistrature et non pas comme l'énonce le paragraphe (3), continuer d'exercer les fonctions de juge provincial.

2. Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

3. Les recommandations du sous-comité au sujet de la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, auquel les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

Idem

(7) L'article 51.9, qui traite des normes de conduite des juges provinciaux, l'article 51.10, qui traite de leur formation continue, et l'article 51.11, qui traite de l'évaluation de leur rendement, ne s'appliquent aux protonotaires que si le juge en chef de la Cour supérieure de justice y consent.

(8) Les protonotaires reçoivent les mêmes traitements, prestations de retraite et autres avantages sociaux et allocations que les juges provinciaux reçoivent aux termes de la convention cadre énoncée à l'annexe de la présente loi.

ARTICLE 87.1

JUGES DE LA COUR DES PETITES CRÉANCES

87.1 (1) Le présent article s'applique aux juges provinciaux qui ont été affectés à la Cour provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990.

(2) Le juge en chef de la Cour supérieure de justice exerce, à l'égard des juges provinciaux à qui s'applique le présent article, le pouvoir du juge en chef de la Cour de justice de l'Ontario qui est prévu aux paragraphes 44 (1) et (2).

MAINTIEN EN FONCTION

(3) Le droit d'un juge provincial à qui s'applique le présent article de continuer d'exercer ses fonctions en vertu du paragraphe 47 (3) est assujéti à l'approbation du juge en chef de la Cour supérieure de justice, qui prend la décision conformément aux critères qu'il a établis et que le Conseil de la magistrature a approuvés.

PLAINTES

(4) Lorsque le Conseil de la magistrature traite une plainte portée contre un juge provincial à qui s'applique le présent article, les dispositions spéciales suivantes s'appliquent :

REQUÊTE

45 (1) Le juge provincial qui croit ne pas être en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à moins qu'il ne soit tenu compte de ses besoins peut présenter une requête au Conseil de la magistrature pour que soit rendue l'ordonnance prévue au paragraphe (2).

OBLIGATION DU CONSEIL DE LA MAGISTRATURE

(2) S'il conclut que le juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à moins qu'il ne soit tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

ARTICLE 45

(5) L'article 51.9, qui porte sur les normes de conduite des juges provinciaux, l'article 51.10, qui porte sur la formation continue de ces derniers, et l'article 51.11, qui porte sur l'évaluation de leur rendement, ne s'appliquent aux juges provinciaux à qui s'applique le présent article que si le juge en chef de la Cour supérieure de justice y consent. Voir :

APPLICATION DES ART. 51.9, 51.10 ET 51.11

2. Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

3. Les recommandations du sous-comité concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, à qui les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

1. Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un juge provincial qui a été affecté à la Cour provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le juge qui doit remplacer ce juge.

ARTICLE 51.11

EVALUATION DU RENDEMENT

51.11 (1) Le juge en chef de la Cour de justice de l'Ontario peut élaborer un programme d'évaluation du rendement des juges provinciaux et le mettre en oeuvre une fois qu'il a été examiné et approuvé par le Conseil de la magistrature.

OBLIGATION DU JUGE EN CHEF

(2) Le juge en chef rend public le programme d'évaluation du rendement une fois qu'il a été approuvé par le Conseil de la magistrature.

OBJECTIFS

(3) Les objectifs suivants constituent certains des objectifs que le juge en chef peut chercher à réaliser en élaborant un programme d'évaluation du rendement des juges :

1. Accroître le rendement individuel des juges et le rendement des juges dans leur ensemble.
2. Déterminer les besoins en formation continue.
3. Aider à l'affectation des juges.
4. Déterminer les possibilités de perfectionnement professionnel.

PORTÉE DE L'ÉVALUATION

(4) Dans l'évaluation du rendement d'un juge, la décision prise dans un cas particulier ne doit pas être prise en considération.

CARACTÈRE CONFIDENTIEL

(5) L'évaluation du rendement d'un juge est confidentielle et n'est divulguée qu'au juge, à son juge principal régional et à la personne ou les personnes qui l'ont l'évaluation.

NON-ADMISSIBILITÉ, EXCEPTION

(6) L'évaluation du rendement d'un juge ne doit pas être admise en preuve devant le Conseil de la magistrature ni devant un tribunal, qu'il soit judiciaire, quasi-judiciaire ou administratif, sauf si le juge y consent.

APPLICATION DES PAR. (5) ET (6)

(7) Les paragraphes (5) et (6) s'appliquent à tout ce qui est compris dans l'évaluation du rendement d'un juge ainsi qu'à tous les renseignements recueillis relativement à l'évaluation.

ARTICLE 51.12

CONSULTATION

51.12 Lorsqu'il fixe des normes de conduite en vertu de l'article 51.9, élabore un plan de formation continue aux termes de l'article 51.10 et élabore un programme d'évaluation du rendement en vertu de l'article 51.11, le juge en chef de la Cour de justice de l'Ontario consulte les juges de cette cour ainsi que d'autres personnes s'il l'estime approprié.

ARTICLE 87

PROTONOTAIRES

87 (1) Les personnes qui étaient protonotaires de la Cour suprême avant le 1^{er} septembre 1990 sont protonotaires de la Cour supérieure de justice.

(2) Les protonotaires ont la compétence que leur attribuent les règles de pratique dans les instances devant la Cour supérieure de justice.

APPLICATION DES ART. 44 À 51.12

(3) Les articles 44 à 51.12 s'appliquent, avec les adaptations nécessaires, aux protonotaires de la même manière qu'aux juges provinciaux.

(4) Le juge en chef de la Cour supérieure de justice exerce, à l'égard des protonotaires, le pouvoir du juge en chef de la Cour de justice de l'Ontario qui est prévu aux paragraphes 44 (1) et (2).

(5) Le droit d'un protonotaire de continuer d'exercer ses fonctions en vertu du paragraphe 47 (3) est assujéti à l'approbation du juge en chef de la Cour supérieure de justice, qui rend une décision à cet effet conformément aux critères qu'il a établis et que le Conseil de la magistrature a approuvés.

(6) Lorsque le Conseil de la magistrature traite une plainte portée contre un protonotaire, les dispositions spéciales suivantes s'appliquent :

1.

Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un protonotaire. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le protonotaire qui doit remplacer le juge.

ANNEXE "D"

(3) Les objectifs suivants constituent certains des objectifs que le juge en chef peut chercher à réaliser en mettant en application les normes de conduite des juges :

OBJECTIFS

(2) Le juge en chef veille à ce que les normes de conduite soient mises à la disposition du public, en français et en anglais, une fois qu'elles ont été approuvées par le Conseil de la magistrature.

OBLIGATION DU JUGE EN CHEF

(1) Le juge en chef de la Cour de justice de l'Ontario peut fixer des normes de conduite des juges provinciaux et élaborer un plan pour la prise d'effet des normes, et il peut mettre les normes en application et le plan en oeuvre une fois qu'ils ont été examinés et approuvés par le Conseil de la magistrature.

NORMES DE CONDUITE

ARTICLE 51.9

(5) Une plainte portée contre un juge provincial devant le Conseil de la magistrature avant le jour de l'entrée en vigueur de l'article 16 de la Loi de 1994 modifiant des lois en ce qui concerne les tribunaux judiciaires et examinée à une réunion du Conseil de la magistrature avant ce jour-là est traitée par celui-ci tel qu'il était constituée immédiatement avant ce jour-là, conformément à l'article 49 de la présente loi tel qu'il existait immédiatement avant ce jour-là.

DISPOSITION TRANSITOIRE

(4) Le présent article s'applique aux juges provinciaux qui n'ont pas encore atteint l'âge de la retraite et aux juges provinciaux dont le maintien en fonction après avoir atteint l'âge de la retraite a été approuvé en vertu du paragraphe 47 (3), (4) ou (5).

APPLICATION

(3) Le lieutenant-gouverneur peut prendre un décret en vue de la destitution d'un juge provincial prévue au présent article, sur demande de l'Assemblée.

DÉCRET DE DESTITUTION

(2) Le procureur général dépose la recommandation devant l'Assemblée. Si celle-ci ne siège pas, il la dépose dans les quinze jours qui suivent le début de la session suivante.

DÉPÔT DE LA RECOMMANDATION

OBJECTIFS

(2) Le juge en chef veille à ce que le plan de formation continue soit mis à la disposition du public, en français et en anglais, une fois qu'il a été approuvé par le Conseil de la magistrature.

OBLIGATION DU JUGE EN CHEF

(1) Le juge en chef de la Cour de justice de l'Ontario élabore un plan de formation continue des juges provinciaux et le met en oeuvre une fois qu'il a été examiné et approuvé par le Conseil de la magistrature.

FORMATION CONTINUE

ARTICLE 51.10

1. Reconnaître l'autonomie de la magistrature.
2. Maintenir la qualité supérieure du système judiciaire et assurer l'administration efficace de la justice.
3. Favoriser l'égalité au sein du système judiciaire et le sentiment d'inclusion à celui-ci.
4. Faire en sorte que la conduite des juges atteste le respect qui leur est témoigné.
5. Souligner la nécessité d'assurer, par la formation continue, le perfectionnement professionnel et le développement personnel des juges ainsi que le développement de leur sensibilisation aux questions sociales.

DIVULGATION DU NOM

(6) Dans sa recommandation au procureur général, le Conseil de la magistrature fournit le nom du juge, mais le procureur général ne doit pas le divulguer à moins qu'il n'y ait eu une audience publique sur la plainte ou que le Conseil n'ait, par ailleurs, rendu public le nom du juge.

MONTANT DE L'INDEMNITÉ

(7) Le montant de l'indemnité recommandé aux termes du paragraphe (4) ou (5) peut se rapporter à tout ou partie des frais pour services juridiques du juge et est calculé selon un taux pour services juridiques qui ne dépasse pas le taux maximal normalement prévu par le gouvernement de l'Ontario pour des services similaires.

VERSEMENT

(8) Le procureur général verse l'indemnité au juge conformément à la recommandation

ARTICLE 51.8

DESTITUTION MOTIVÉE

51.8 (1) Un juge provincial ne peut être destitué que si les conditions suivantes sont réunies :

a) une plainte a été portée à son sujet devant le Conseil de la magistrature;

b) le Conseil de la magistrature, à l'issue d'une audience tenue aux termes de l'article 51.6, recommande au procureur général la destitution du juge en raison du fait qu'il est devenu incapable de remplir convenablement ses fonctions ou inhabile pour l'une des raisons suivantes :

(i) il est inapte, en raison d'une invalidité, à s'acquitter des obligations essentielles de son poste (si une ordonnance pour qu'il soit tenu compte de ses besoins ne remédierait pas à l'incapacité ou ne pourrait pas être rendue parce qu'elle causerait un préjudice injustifié à la personne à laquelle il incomberait de tenir compte de ces besoins, ou a été rendue mais n'a pas remédié à l'incapacité),

(ii) il a eu une conduite incompatible avec l'exercice convenable de ses fonctions,

(iii) il n'a pas rempli les fonctions de sa charge.

INDEMNISATION

ARTICLE 51.7

(20) Si une ordonnance a été rendue en vertu du paragraphe (10) et que le Conseil de la magistrature rejette la plainte en concluant qu'elle n'était pas fondée, le juge ne doit pas être identifié dans le rapport sans son consentement et le Conseil ordonne que les renseignements relatifs à la plainte qui pourraient identifier le juge ne doivent jamais être rendus publics sans le consentement de celui-ci.

INTERDICTION PERMANENTE DE PUBLIER

1. Le plaignant ou le témoin à la demande duquel une ordonnance a été rendue en vertu du paragraphe (9).
2. Le juge, si l'audience a été tenue à huis clos, à moins que le Conseil de la magistrature n'ordonne que le nom du juge soit divulgué.

51.7 (1) Lorsqu'il a traité une plainte portée contre un juge provincial, le Conseil de la magistrature étudie la question de savoir si le juge devrait être indemnisé pour les frais pour services juridiques qu'il a engagés relativement à la démarche suivie aux termes des articles 51.4, 51.5 et 51.6 et du présent article en ce qui concerne la plainte.

EXAMEN DE LA QUESTION JOINT À L'AUDIENCE

(2) S'il tient une audience sur la plainte, le Conseil de la magistrature lui joint l'examen de la question de l'indemnisation.

EXAMEN PUBLIC OU À HUIS CLOS

(3) L'examen de la question de l'indemnisation par le Conseil de la magistrature est ouvert au public s'il y a eu une audience publique sur la plainte; sinon, l'examen se fait à huis clos.

RECOMMANDATION

(4) S'il est d'avis que le juge devrait être indemnisé, le Conseil de la magistrature fait une recommandation en ce sens au procureur général, laquelle recommandation indique le montant de l'indemnité.

Idem
(5) Si la plainte est rejetée à l'issue d'une audience, le Conseil de la magistrature recommande au procureur général que le juge soit indemnisé pour ses frais pour services juridiques et indique le montant de l'indemnité.

DIVULGATION DANS DES CIRCONSTANCES EXCEPTIONNELLES

(8) Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

ORDONNANCES INTERDISANT LA PUBLICATION

(9) Si la plainte porte sur des allégations d'inconduite d'ordre sexuel ou de harcèlement sexuel, le Conseil de la magistrature interdit, à la demande d'un plaignant ou d'un autre témoin qui déclare avoir été victime d'une conduite semblable par le juge, la publication de renseignements qui pourraient identifier le plaignant ou le témoin, selon le cas.

PUBLICATION INTERDITE

(10) Dans des circonstances exceptionnelles et conformément aux critères établis aux termes du paragraphe 51.1 (1), le Conseil de la magistrature peut rendre une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte.

MESURES

(11) Une fois qu'il a terminée l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclu ou non que la plainte n'est pas fondée ou, s'il conclut qu'il y a eu inconduite de la part du juge, il peut, selon le cas :

a) donner un avertissement au juge;

b) réprimander le juge;

c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;

d) ordonner que le juge prenne des dispositions précises, telles suivre une formation ou un traitement, comme condition pour continuer de siéger à titre de juge;

e) suspendre le juge, avec rémunération, pendant une période quelle qu'elle soit;

f) suspendre le juge, sans rémunération mais avec avantages sociaux, pendant une période maximale de trente jours;

g) recommander au procureur général la destitution du juge conformément à l'article 51.8.

Idem

(12) Le Conseil de la magistrature peut adopter toute combinaison des mesures énoncées aux alinéas (11) a) à f).

INVALIDITÉ

(13) S'il conclut que le juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste, mais qu'il serait en mesure de le faire s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

APPLICATION DU PAR. (13)

(14) Le paragraphe (13) s'applique si :

a) d'une part, un facteur de la plainte était que l'invalidité influe sur le fait que le juge n'est pas en mesure de s'acquitter des obligations essentielles du poste;

b) d'autre part, le Conseil de la magistrature rejette la plainte ou prend des mesures prévues aux alinéas (11) a) à f).

PRÉJUDICE INJUSTIFIÉ

(15) Le paragraphe (13) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

PARTICIPATION

(16) Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe (13) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

LA COURONNE EST LIÉE

(17) Une ordonnance rendue aux termes du paragraphe (13) lie la Couronne.

RAPPORT AU PROCUREUR GÉNÉRAL

(18) Le Conseil de la magistrature peut présenter au procureur général un rapport sur la plainte, l'enquête, l'audience et la décision, sous réserve d'une ordonnance rendue en vertu du paragraphe 49 (24). Le procureur général peut rendre le rapport public s'il est d'avis qu'il y a de l'intérêt public.

NON-IDENTIFICATION DE PERSONNES

(19) Les personnes suivantes ne doivent pas être identifiées dans le rapport :

ARTICLE 51.6

DÉCISION DU CONSEIL

51.6 (1) Lorsque le Conseil de la magistrature décide de tenir une audience, il le fait conformément au présent article.

APPLICATION DE LA LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

(2) La Loi sur l'exercice des compétences légales, à l'exception de l'article 4 et du paragraphe 9 (1), s'applique à l'audience.

RÈGLES DE PROCÉDURE

(3) Les règles de procédure que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1) s'appliquent à l'audience.

COMMUNICATION CONCERNANT L'OBJET DE L'AUDIENCE

(4) Les membres du Conseil de la magistrature qui participent à l'audience ne doivent pas communiquer ni directement ni indirectement avec une partie, un avocat, un mandataire ou une autre personne, pour ce qui est de l'objet de l'audience, sauf si toutes les parties et leurs avocats ou mandataires ont été avisés et ont l'occasion de participer.

EXCEPTION

(5) Le paragraphe (4) n'a pas pour effet d'empêcher le Conseil de la magistrature d'engager un avocat pour se faire aider conformément au paragraphe 49 (21), auquel cas la nature des conseils donnés par l'avocat est communiquée aux parties pour leur permettre de présenter des observations quant au droit applicable.

PARTIES

(6) Le Conseil de la magistrature détermine quelles sont les parties à l'audience.

EXCEPTION, AUDIENCES À HUIS CLOS

(7) Dans des circonstances exceptionnelles, le Conseil de la magistrature peut tenir la totalité ou une partie de l'audience à huis clos s'il décide, conformément aux critères établis aux termes du paragraphe 51.1 (1), que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique.

RAPPORT

(9) S'il approuve la décision prise au sujet de la plainte, le Conseil de la magistrature peut rendre publics les résultats de la médiation en fournissant un résumé de la plainte mais sans identifier le plaignant ni le juge.

RENOI AU CONSEIL

(10) À n'importe quel moment pendant ou après la médiation, le plaignant ou le juge peut renvoyer la plainte au Conseil de la magistrature, lequel examine la question, à huis clos, et peut, selon le cas :

- a) rejeter la plainte;
- b) renvoyer la plainte au juge en chef, en assortissant ou non le renvoi de conditions comme le prévoit le paragraphe 51.4 (15);
- c) tenir une audience aux termes de l'article 51.6.

NON-APPLICATION DE LA LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

(11) La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature prévus aux paragraphes (8) et (10).

AVIS AU JUGE ET AU PLAIGNANT

(12) Une fois qu'il s'est prononcé conformément au paragraphe (8) ou (10), le Conseil de la magistrature communique sa décision au juge et au plaignant, en exposant brièvement les motifs dans le cas d'un rejet.

DIRECTIVES ET RÈGLES DE PROCÉDURE

(13) Lorsqu'il étudie des rapports, examine des questions et se prononce aux termes des paragraphes (8) et (10), le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

- Idem
- (3) Sans préjudice de la portée générale du paragraphe (2), les critères doivent prévoir que les plaintes sont exclues de la procédure de médiation dans les circonstances suivantes :
1. Il existe un déséquilibre important du pouvoir entre le plaignant et le juge, ou il existe un écart si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable.
 2. La plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motif illicite de discrimination ou de harcèlement prévu dans une disposition du *Code des droits de la personne*.
 3. L'intérêt public requiert la tenue d'une audience sur la plainte.
- CONSEILS JURIDIQUES**
- (4) Une plainte ne peut être renvoyée à un médiateur que si le plaignant et le juge y consentent, s'ils peuvent obtenir des conseils juridiques de personnes indépendantes et s'ils en ont eu l'occasion.
- MÉDIATEUR QUALIFIÉ**
- (5) Le médiateur doit être une personne qui a reçu une formation en médiation et qui n'est pas un juge. Si la médiation est menée de concert par deux personnes ou plus, au moins une de ces personnes doit satisfaire à ces exigences.
- IMPARTIALITÉ**
- (6) Le médiateur est impartial.
- EXCLUSION**
- (7) Aucun des membres du sous-comité qui a enquêté sur la plainte et aucun des membres du Conseil de la magistrature qui a traité la plainte en vertu du paragraphe 51.4 (17) ou (18) ne doit participer à la médiation.
- EXAMEN PAR LE CONSEIL**
- (8) Le médiateur présente un rapport sur les résultats de la médiation, sans identifier le plaignant ni le juge qui fait l'objet de la plainte, au Conseil de la magistrature, lequel étudie, à huis clos, le rapport et peut :
- a) approuver la décision prise au sujet de la plainte;
 - b) si la médiation n'aboutit pas à une décision ou si le Conseil est d'avis que la décision n'est pas dans l'intérêt public :

- a) tenir une audience aux termes de l'article 51.6;
- b) rejeter la plainte;
- c) renvoyer la plainte au juge en chef, en assortissant ou non le renvoi de conditions comme le prévoit le paragraphe (15);
- d) renvoyer la plainte à un médiateur conformément à l'article 51.5.

NON-APPLICATION DE LA LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

(19) La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature prévus aux paragraphes (17) et (18).

AVIS AU JUGE ET AU PLAIGNANT

(20) Une fois qu'il s'est prononcé conformément au paragraphe (17) ou (18), le Conseil de la magistrature communique sa décision au juge et au plaignant, en exposant brièvement les motifs dans le cas d'un rejet.

DIRECTIVES ET RÈGLES DE PROCÉDURE

(21) Lorsqu'il mène des enquêtes, fait des recommandations en vertu du paragraphe (8) et se prononce aux termes des paragraphes (13) et (15), le sous-comité se conforme aux directives et aux règles de procédure que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1).

Idem

(22) Lorsqu'il examine des rapports et des plaintes et se prononce aux termes des paragraphes (17) et (18), le Conseil de la magistrature se conforme aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

ARTICLE 51.5

MÉDIATION

51.5 (1) Le Conseil de la magistrature peut établir une procédure de médiation pour les plaignants et pour les juges qui font l'objet de plaintes.

CRITÈRES

(2) Si le Conseil de la magistrature établit une procédure de médiation, il doit aussi établir des critères pour exclure de la procédure les plaintes qui ne se prêtent pas à la médiation.

ROTATION DES MEMBRES

(2) Les membres admissibles du Conseil de la magistrature siègent tous au sous-comité par rotation.

REJET

(3) Le sous-comité rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure.

ENQUÊTE

(4) Si la plainte n'est pas rejetée aux termes du paragraphe (3), le sous-comité mène les enquêtes qu'il estime appropriées.

EXPERTS

(5) Le sous-comité peut engager des personnes, y compris des avocats, pour l'aider dans la conduite de son enquête.

ENQUÊTE À HUIS CLOS

(6) L'enquête est menée à huis clos.

NON-APPLICATION DE LA LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

(7) La Loi sur l'exercice des compétences légales ne s'applique pas aux activités du sous-comité.

RECOMMANDATIONS PROVISOIRES

(8) Le sous-comité peut recommander à un juge principal régional la suspension, avec rémunération, du juge qui fait l'objet de la plainte ou l'affectation de celui-ci à un autre endroit, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

Idem

(9) La recommandation est présentée au juge principal régional nommé pour la région à laquelle le juge est affecté, sauf si le juge principal régional est membre du Conseil de la magistrature, auquel cas la recommandation est présentée à un autre juge principal régional.

POUVOIR DU JUGE PRINCIPAL RÉGIONAL

(10) Le juge principal régional peut suspendre ou réaffecter le juge selon la recommandation du sous-comité.

POUVOIR DISCRÉTIONNAIRE

(11) Le pouvoir discrétionnaire qu'a le juge principal régional d'accepter ou de rejeter la recommandation du sous-comité n'est pas assujéti à l'administration ni à la surveillance de la part du juge en chef.

EXCEPTION : PLAINTES DÉPOSÉES CONTRE CERTAINS JUGES

(12) Si la plainte est déposée contre le juge en chef de la Cour de justice de l'Ontario, un juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional qui est membre du Conseil de la magistrature, toute recommandation prévue au paragraphe (8) en ce qui concerne la plainte est présentée au juge en chef de la Cour supérieure de justice, qui peut suspendre ou réaffecter le juge selon la recommandation du sous-comité.

DÉCISION DU SOUS-COMITÉ

(13) Lorsqu'il a terminé son enquête, le sous-comité, selon le cas :

- a) rejette la plainte;
- b) renvoie la plainte au juge en chef;
- c) renvoie la plainte à un médiateur conformément à l'article 51.5;
- d) renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience aux termes de l'article 51.6.

Idem

(14) Le sous-comité ne peut rejeter la plainte ou la renvoyer au juge en chef ou à un médiateur que si les deux membres en conviennent, sinon, la plainte doit être renvoyée au Conseil de la magistrature.

CONDITIONS DU RENVOI AU JUGE EN CHEF

(15) Le sous-comité peut, si le juge qui fait l'objet de la plainte y consent, assortir de conditions la décision de renvoyer la plainte au juge en chef.

RAPPORT

(16) Le sous-comité présente au Conseil de la magistrature un rapport sur sa décision concernant toute plainte qui est rejetée ou renvoyée au juge en chef ou à un médiateur, sans identifier le plaignant ni le juge qui fait l'objet de la plainte.

POUVOIR DU CONSEIL DE LA MAGISTRATURE

(17) Le Conseil de la magistrature examine le rapport, à huis clos, et peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte.

Idem

(18) Le Conseil de la magistrature examine, à huis clos, chaque plainte que le sous-comité lui renvoie et peut, selon le cas :

Idem
(2) Les plaintes contre des juges provinciaux peuvent être portées en français ou en anglais.

Idem
(3) L'audience prévue à l'article 51.6 est menée en anglais, mais le plaignant ou le témoin qui parle français ou le juge qui fait l'objet d'une plainte et qui parle français a droit, sur demande, à ce qui suit :

a) avant l'audience, une traduction en français des documents qui sont en anglais et qui seront examinés à l'audience;

b) les services d'un interprète à l'audience;

Idem
(4) Le paragraphe (3) s'applique également aux médiations menées aux termes de l'article 51.5 et à l'examen qu'a effectuée le Conseil de la magistrature aux termes de l'article 51.7 en ce qui concerne la question de l'indemnisation, si le paragraphe 51.7 (2) s'applique.

AUDIENCE OU MÉDIATION BILINGUE
(5) Le Conseil de la magistrature peut ordonner qu'une audience ou une médiation à laquelle s'applique le paragraphe (3) soit bilingue s'il est d'avis qu'elle peut être menée convenablement de cette manière.

PARTIE D'AUDIENCE OU DE MÉDIATION
(6) Un ordre prévu au paragraphe (5) peut s'appliquer à une partie de l'audience ou de la médiation, auquel cas les paragraphes (7) et (8) s'appliquent avec les adaptations nécessaires.

Idem
(7) Au cours d'une audience ou d'une médiation bilingue :

a) les témoignages oraux et les observations orales peuvent être présentés en français ou en anglais et ils sont consignés dans la langue de présentation;

b) les documents peuvent être déposés dans l'une ou l'autre langue;

c) dans le cas d'une médiation, les discussions peuvent avoir lieu dans l'une ou l'autre langue;

d) les motifs d'une décision ou le rapport du médiateur, selon le cas, peuvent être rédigés dans l'une ou l'autre langue.

Idem
(8) Lors d'une audience ou d'une médiation bilingue, si le plaignant ou le juge qui fait l'objet de la plainte ne parle qu'une des deux langues, il a droit, sur demande, à l'interprétation simultanée des témoignages, des observations ou des discussions qui ont lieu dans l'autre langue et à une traduction des documents déposés ou des motifs ou rapports rédigés dans l'autre langue.

ARTICLE 51.3

PLAINTES
51.3 (1) Toute personne peut porter devant le Conseil de la magistrature une plainte selon laquelle il y aurait eu inconduite de la part d'un juge provincial.

Idem
(2) Si une allégation d'inconduite contre un juge provincial est présentée à un membre du Conseil de la magistrature, elle est traitée comme une plainte portée devant celui-ci.

Idem
(3) Si une allégation d'inconduite contre un juge provincial est présentée à un autre juge ou au procureur général, cet autre juge ou le procureur général, selon le cas, fournit à l'auteur de l'allégation des renseignements sur le rôle du Conseil de la magistrature au sein du système judiciaire et sur la façon de porter plainte, et le renvoie au Conseil de la magistrature.

CONDUITE DE L'AFFAIRE
(4) Une fois qu'une plainte a été portée devant lui, le Conseil de la magistrature est chargé de la conduite de l'affaire.
RENSEIGNEMENTS SUR LA PLAINTÉ
(5) À la demande de toute personne, le Conseil de la magistrature peut confirmer ou nier qu'il a été saisi d'une plainte donnée.

ARTICLE 51.4

EXAMEN PAR UN SOUS-COMITÉ
51.4 (1) La plainte reçue par le Conseil de la magistrature est examinée par un sous-comité du Conseil qui se compose d'un juge provincial autre que le juge en chef et d'une personne qui n'est ni juge ni avocat.

ARTICLE 51.1

RÈGLES

51.1 (1) Le Conseil de la magistrature établit et rend publiques ses propres règles de procédure, y compris ce qui suit :

1. Des directives et les règles de procédure pour l'application de l'article 45.
2. Des directives et les règles de procédure pour l'application du paragraphe 51.4 (21).
3. Des directives et les règles de procédure pour l'application du paragraphe 51.4 (22).
4. S'il y a lieu, des critères pour l'application du paragraphe 51.5 (2).
5. S'il y a lieu, des directives et les règles de procédure pour l'application du paragraphe 51.5 (13).
6. Les règles de procédure pour l'application du paragraphe 51.6 (3).
7. Des critères pour l'application du paragraphe 51.6 (7).
8. Des critères pour l'application du paragraphe 51.6 (8).
9. Des critères pour l'application du paragraphe 51.6 (10).

LOI SUR LES RÈGLEMENTS

(2) La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

(3) Les articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales ne s'appliquent pas au Conseil de la magistrature.

ARTICLE 51.2

LANGUES OFFICIELLES DANS LES TRIBUNAUX

51.2 (1) L'information fournie aux termes des paragraphes 51 (1), (3) et (4) et tout ce qui est rendu public aux termes du paragraphe 51.1 (1) le sont en français et en anglais.

ARTICLE 51

INFORMATION AU PUBLIC

51 (1) Le Conseil de la magistrature fournit, dans les palais de justice et ailleurs, de l'information à son sujet et au sujet du système judiciaire, y compris des renseignements sur ce que les membres du public peuvent faire pour obtenir de l'aide en vue de porter plainte.

Idem

(2) Lorsqu'il fournit de l'information, le Conseil de la magistrature met l'accent sur l'élimination des obstacles culturels et linguistiques et sur l'importance de tenir compte des besoins des personnes handicapées.

AIDE AU PUBLIC

(3) Au besoin, le Conseil de la magistrature prend des dispositions afin que les membres du public reçoivent de l'aide pour préparer des documents en vue de porter plainte.

ACCÈS PAR TÉLÉPHONE

(4) Le Conseil de la magistrature offre, à l'échelle de la province, un service téléphonique gratuit d'accès à de l'information à son sujet, notamment sur son rôle au sein du système judiciaire, y compris un service pour sourds.

PERSONNES HANDICAPÉES

(5) Afin de permettre aux personnes handicapées de participer efficacement à la procédure à suivre pour les plaintes, le Conseil de la magistrature fait en sorte qu'il soit tenu compte de leurs besoins, à ses frais, à moins que cela ne lui cause un préjudice injustifié, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

RAPPORT ANNUEL

(6) Après la fin de chaque année, le Conseil de la magistrature présente au procureur général un rapport annuel, en français et en anglais, sur ses activités, y compris, à l'égard de toutes les plaintes reçues ou traitées pendant l'année, un sommaire de la plainte, les conclusions et un exposé de la décision. Toutefois, le rapport ne doit pas contenir de renseignements qui pourraient identifier le juge ou le plaignant.

DÉPÔT

(7) Le procureur général présente le rapport annuel au lieutenant-gouverneur en conseil et le dépose alors devant l'Assemblée.

DOSSIERS CONFIDENTIELS

(24) Le Conseil de la magistrature ou un sous-comité peut ordonner que tout renseignement ou document relatif à une médiation ou à une réunion ou audience du Conseil qui a été tenue à huis clos est confidentiel et ne doit pas être divulgué ni rendu public.

Idem

(25) Le paragraphe (24) s'applique, que les renseignements ou les documents soient en la possession du Conseil de la magistrature, du procureur général ou d'une autre personne.

EXCEPTIONS

(26) Le paragraphe (24) ne s'applique pas aux renseignements ni aux documents qui satisfont à l'une ou l'autre des conditions suivantes :

a) leur divulgation par le Conseil de la magistrature est exigée par la présente loi;

b) ils n'ont pas été traités comme des documents ou renseignements confidentiels et n'ont pas été préparés exclusivement aux fins de la médiation ou d'une réunion ou d'une audience du Conseil.

IMMUNITÉ

(27) Sont irrecevables les actions ou autres instances en dommages-intérêts introduites contre le Conseil de la magistrature, un de ses membres ou de ses employés ou quiconque agit sous son autorité pour un acte accompli de bonne foi dans l'exercice effectif ou censé tel de ses fonctions.

RÉMUNÉRATION

(28) Les membres qui sont nommés aux termes de l'alinéa (2) g) ont le droit de recevoir la rémunération quotidienne que fixe le lieutenant-gouverneur en conseil.

ARTICLE 50

PLAINTE DÉPOSÉE CONTRE LE JUGE EN CHEF DE LA COUR DE JUSTICE DE L'ONTARIO

50 (1) Si le juge en chef de la Cour de justice de l'Ontario fait l'objet d'une plainte :

a) le juge en chef de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

b) le juge en chef adjoint de la Cour de justice de l'Ontario préside les réunions et les audiences du Conseil au lieu du juge en chef, de la Cour de justice de l'Ontario et fait des nominations en vertu du paragraphe 49 (3) au lieu du juge en chef, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

c) tout renvoi de la plainte qui serait par ailleurs fait au juge en chef de la Cour de justice de l'Ontario aux termes de l'alinéa 51.4 (13) b) ou 51.4 (18) c), du sous-alinéa 51.5 (8) b) (ii) ou de l'alinéa 51.5 (10) b) est fait au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

(2) Si le juge en chef de la Cour de justice de l'Ontario est suspendu en vertu du paragraphe 51.4 (12) :

a) d'une part, les plaintes qui seraient par ailleurs renvoyées au juge en chef de la Cour de justice de l'Ontario aux termes des alinéas 51.4 (13) b) et 51.4 (18) c), du sous-alinéa 51.5 (8) b) (ii) et de l'alinéa 51.5 (10) b) sont renvoyées au juge en chef adjoint de la Cour de justice de l'Ontario en chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

b) d'autre part, les approbations annuelles qui seraient par ailleurs accordées ou refusées par le juge en chef de la Cour de justice de l'Ontario sont accordées ou refusées par le juge en chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

PLAINTE DÉPOSÉE CONTRE LE JUGE EN CHEF ADJOINT OU UN JUGE PRINCIPAL RÉGIONAL

(3) Si le juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional nommé aux termes de l'alinéa 49 (2) c) fait l'objet d'une plainte, le juge en chef de la Cour de justice de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario provincial au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef adjoint ou du juge principal régional, selon le cas, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

VACANCE

(12) Si le poste d'un membre nommé aux termes de l'alinéa (2) d), f) ou g) devient vacant, un nouveau membre possédant des compétences similaires peut être nommé pour terminer le mandat.

QUORUM

(13) Les règles suivantes concernant le quorum s'appliquent, sous réserve des paragraphes (15) et (17) :

1. Huit membres, y compris le président, constituent le quorum.
2. Au moins la moitié des membres présents doivent être des juges et au moins quatre autres membres ne doivent pas être des juges.

COMITÉ D'EXAMEN

(14) Le Conseil de la magistrature peut former un comité en vue de traiter une plainte visée au paragraphe 51.4 (17) ou (18) ou au paragraphe 51.5 (8) ou (10) et d'examiner la question concernant l'indemnisation aux termes de l'article 51.7 et, à cette fin, le comité a les mêmes pouvoirs que le Conseil de la magistrature.

Idem
(15) Les règles suivantes s'appliquent à un comité formé en vertu du paragraphe (14) :

1. Le comité se compose de deux juges provinciaux autres que le juge en chef, d'un avocat et d'une personne qui n'est ni juge ni avocat.
2. Un des juges, désigné par le Conseil de la magistrature, préside le comité.
3. Quatre membres constituent le quorum.

COMITÉS D'AUDIENCE

(16) Le Conseil de la magistrature peut former un comité en vue de tenir une audience en vertu de l'article 51.6 et d'examiner la question concernant l'indemnisation aux termes de l'article 51.7 et, à cette fin, le comité a les mêmes pouvoirs que le Conseil de la magistrature.

Idem
(17) Les règles suivantes s'appliquent à un comité formé en vertu du paragraphe (16) :

1. La moitié des membres du comité, y compris le président, doivent être des juges et la moitié ne doivent pas être des juges.

PRÉSIDENCE

(18) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(19) Les membres du sous-comité qui a enquêté sur une plainte ne doivent pas, selon le cas :

- a) traiter la plainte aux termes du paragraphe 51.4 ou (17) ou (18) ou du paragraphe 51.5 (8) ou (10);
- b) participer à une audience sur la plainte prévue à l'article 51.6.

Idem
(20) Les membres du Conseil de la magistrature qui ont traité la plainte aux termes du paragraphe 51.4 (17) ou (18) ou du paragraphe 51.5 (8) ou (10) ne doivent pas participer à une audience sur la plainte prévue à l'article 51.6.

EXPERTS

(21) Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider.

SERVICES DE SOUTIEN

(22) Le Conseil de la magistrature fournit des services de soutien, y compris l'orientation initiale et la formation continue, pour permettre à ses membres de participer efficacement. Il prête une attention particulière aux besoins des membres qui ne sont ni juges ni avocats et administre séparément une partie de son budget affecté aux services de soutien à cette fin.

Idem
(23) Le Conseil de la magistrature administre séparément une partie de son budget affecté aux services de soutien pour répondre aux besoins de tout membre qui a une invalidité.

LOI SUR LES TRIBUNAUX
JUDICIAIRES – CHAPITRE C.43
CONSEIL DE LA MAGISTRATURE

ARTICLE 49

CONSEIL DE LA MAGISTRATURE

49 (1) Le Conseil de la magistrature de l'Ontario est maintenu sous le nom de Conseil de la magistrature de l'Ontario en français et sous le nom de Ontario Judicial Council en anglais.

COMPOSITION

(2) Le Conseil de la magistrature se compose :

a) du juge en chef de l'Ontario ou d'un autre juge de la Cour d'appel désigné par le juge en chef;

b) du juge en chef de la Cour de justice de l'Ontario, ou d'un autre juge de cette cour désigné par le juge en chef, et du juge en chef adjoint de la Cour de justice de l'Ontario;

c) d'un juge principal régional de la Cour de justice de l'Ontario, nommé par le lieutenant-gouverneur en conseil sur la recommandation du procureur général;

d) de deux juges de la Cour de justice de l'Ontario nommés par le juge en chef;

e) du trésorier de la Société du barreau du Haut-Canada ou d'un autre conseiller de la Société du barreau qui est avocat désigné par le trésorier;

f) d'un avocat qui n'est pas conseiller de la Société du barreau du Haut-Canada, nommé par la Société de quatre personnes qui ne sont ni juges ni avocats, nommées par le lieutenant-gouverneur en conseil sur la recommandation du procureur général

MEMBRES TEMPORAIRES

(3) Le juge en chef de la Cour de justice de l'Ontario peut nommer un juge de cette division au Conseil de la magistrature à titre de membre temporaire au lieu d'un autre juge provincial, en vue de traiter une plainte, si les exigences des paragraphes (13), (15), (17), (19) et (20) ne peuvent autrement être satisfaites.

CRITÈRES

(4) Au moment de la nomination des membres effectuée aux termes des alinéas (2) d), f) et g), l'importance qu'il y a de refléter, dans la composition du Conseil de la magistrature, la dualité linguistique de l'Ontario et la diversité de sa population et de garantir un équilibre général entre les deux sexes est reconnue.

MANDAT

(5) Le juge principal régional qui est nommé aux termes de l'alinéa (2) c) demeure membre du Conseil de la magistrature jusqu'à ce qu'il cesse d'exercer les fonctions de juge principal régional.

Idem

(6) Le mandat des membres qui sont nommés aux termes des alinéas (2) d), f) et g) est de quatre ans et n'est pas renouvelable.

MANDATS DE DURÉES DIVERSES

(7) Malgré le paragraphe (6), le mandat d'un des membres nommés pour la première fois aux termes de l'alinéa (2) d) et de deux des membres nommés pour la première fois aux termes de l'alinéa (2) g) est de six ans.

PRÉSIDENCE

(8) Le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel désigné par le juge en chef, préside les réunions et les audiences du Conseil de la magistrature qui portent sur des plaintes portées contre certains juges, et les réunions tenues par celui-ci pour l'application de l'article 45 et du paragraphe 47 (5).

Idem

(9) Le juge en chef de la Cour de justice de l'Ontario, ou un autre juge de cette cour désigné par le juge en chef, préside les autres réunions et audiences du Conseil de la magistrature.

Idem

(10) Le président a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

AUDIENCES ET RÉUNIONS PUBLIQUES
ET À HUIS CLOS

(11) Les audiences et les réunions du Conseil de la magistrature prévues aux articles 51.6 et 51.7 sont ouvertes au public, à moins que le paragraphe 51.6 (7) ne s'applique. Ses autres audiences et réunions peuvent être tenues à huis clos, sauf disposition contraire de la présente loi.

ANNEXE « D »

LOI SUR LES TRIBUNAUX JUDICIAIRES CHAPITRE C.43 CONSEIL DE LA MAGISTRATURE

Les textes de la *Loi sur les tribunaux judiciaires*, c. C-43 qui suivent ne doivent pas être considérés comme les textes authentiques, lesquels se trouvent dans les volumes officiels et les codifications administratives imprimés par Publications Ontario.

1. CENTRE DE RECHERCHE JUDICIAIRE:
Les juges de la Cour de justice de l'Ontario ont accès au Centre de recherche de la Cour de justice de l'Ontario situé à l'ancien hôtel de ville, à Toronto. Le Centre de recherche, composé d'une bibliothèque juridique et d'un système de recherche informatisé, dispose de trois avocats chercheurs et d'un personnel de soutien. On peut accéder au Centre en personne, par téléphone, par courrier électronique ou par télécopieur. Le Centre de recherche répond aux demandes de recherche des juges sur des points particuliers. Il fournit en outre des mises à jour sur les textes législatifs et la jurisprudence dans sa publication périodique intitulée *Items of Interest*.
2. RECENT DEVELOPMENTS : M. le juge Ian MacDonnell fournit également à tous les juges intéressés de la Cour de justice de l'Ontario un résumé et des commentaires sur les décisions actuelles de la Cour d'appel de l'Ontario et de

IV. LES AUTRES RESSOURCES EDUCATIVES

3. CONGÉ AUTOFINANÇÉ : Dans le but de fournir un accès aux occasions éducatives qui se situent hors des paramètres des programmes de formation habituellement offerts aux juges, la Cour de justice de l'Ontario a élaboré une politique de congé autofinancé qui permet aux juges de reporter leur revenu sur un certain nombre d'années en vue de prendre une période de congé autofinancé maximale de douze mois. L'approbation préalable est nécessaire pour ce genre de congé et un comité de révision des pairs examine les demandes et choisit les juges qui seront autorisés à bénéficier d'une telle option.
4. RÉUNIONS RÉGIONALES : La plupart des sept régions de la Cour tiennent des réunions régionales annuelles. Bien que ces réunions fournissent principalement une occasion d'examiner des questions administratives/de gestion régionale, certaines d'entre elles comportent aussi un volet éducatif. Tel est le cas, par exemple, de la réunion régionale du nord où les juges des régions du Nord-Est et du Nord-Ouest de la province se réunissent et abordent des sujets de nature éducative qui sont d'un intérêt spécial au nord, comme l'isolement des juges, le déplacement et la justice autochtone.
5. Outre les programmes de formation mentionnés ci-dessus, la formation fondamentale des juges demeure une démarche autonome et effective, entre autres, par le biais des discussions avec les pairs, de la lecture et de la recherche personnelle.



III. LES PROGRAMMES DE FORMATION EXTERNES

1. COURS DE FRANÇAIS : Les juges de la Cour de justice de l'Ontario qui ont des compétences en français peuvent participer à des cours offerts par le Bureau du Commissaire à la magistrature fédérale. Le niveau de compétence des juges détermine la fréquence et la durée des cours. Ceux-ci ont pour but d'assurer que les juges à présider les audiences en français à la Cour de justice de l'Ontario possèdent les compétences voulues en français et d'entretenir ces compétences. Il y a deux niveaux de cours : a) les cours de terminologie à l'intention des juges francophones; b) les cours de terminologie à l'intention des juges anglophones (bilingues).
2. AUTRES PROGRAMMES DE FORMATION : On encourage les juges de la Cour de justice de l'Ontario à enrichir leur formation en participant à des programmes offerts par d'autres organismes et associations, notamment les suivants :
 - Association canadienne des juges de cours provinciales
 - Institut national de la magistrature
 - Fédération des professions juridiques : droit pénal (droit substantiel, procédure/preuve) et droit de la famille
 - Association internationale des magistrats de la jeunesse et de la famille
 - Association du Barreau canadien
 - Association des avocats criminalistes
 - Advocates Society Conference
 - Association ontarienne de médiation familiale/ Médiation Canada
 - Institut canadien d'administration de la justice
 - Association internationale des femmes juges (chapitre canadien)
 - Conférence sur les cliniques juridiques de la Cour de la famille de l'Ontario
 - Institut canadien d'études juridiques supérieures

Le processus prévoit la présentation d'une demande par un juge pour participer à de tels programmes, un comité de sélection par des pairs et un mécanisme d'évaluation du programme. Ce programme est fonction des fonds disponibles comme le détermine le Secrétaire de la formation chaque année.

Toutefois, le Secrétaire de la formation a créé un comité de participation aux conférences chargé d'examiner les demandes individuelles de financement présentées par les juges qui souhaitent participer à des conférences, séminaires ou programmes autres que ceux organisés par la Cour de justice de l'Ontario. Le financement, lorsqu'il est accordé, ne couvre pas généralement pas 100 % des coûts puisqu'il vise à aider les juges qui sont prêts à dépenser personnellement une certaine somme pour participer à ces activités.

3. COURS D'INFORMATIQUE : Aux termes d'un contrat conclu avec un fournisseur, la Cour de justice de l'Ontario a organisé et continue d'organiser une série de cours d'informatique à l'intention des juges de la Cour de justice de l'Ontario. Ces cours étaient organisés selon les compétences des participants et l'endroit où ils se trouvaient et étaient offerts à différentes dates partout dans la province. Généralement, les juges se rendaient aux bureaux du fournisseur responsable de la formation pour participer à des cours sur les bases de l'informatique, le traitement de texte ainsi que l'enregistrement et l'extraction de données. D'autres cours portaient sur l'utilisation de *Quicklaw* (base de données et système de recherche juridiques).
4. INSTITUT NATIONAL DE LA MAGISTRATURE (I.N.M.) : Par l'intermédiaire de son Secrétaire de la formation, la Cour de justice de l'Ontario contribue financièrement aux activités de l'Institut national de la magistrature, LINM, dont le siège se trouve à Ottawa, subventionne des connaissances suffisantes en informatique.

professionnelles et communautaires pendant les phases de planification et de présentation du programme. Au cours du processus de planification, qui a duré plus de 12 mois, un certain nombre de juges de la Cour de justice de l'Ontario ont reçu une formation à titre d'animateurs du programme. Ce programme fait largement appel à des vidéos et des publications qui constituent des sources de référence permanentes. Le modèle d'animateur a depuis lors été utilisé dans plusieurs autres programmes de formation de la Cour de justice de l'Ontario.

La Cour a entrepris en mai 1996 son deuxième programme important sur le contexte social, intitulé *La Cour dans une société inclusive*, visant à donner de l'information sur l'évolution de la société afin de déterminer l'incidence des changements et de préparer la Cour à mieux y répondre. Ce programme faisait appel à diverses techniques pédagogiques, notamment des séances en groupes de diverses tailles. Un certain nombre de juges animateurs avaient reçu une formation spéciale pour offrir ce programme qui a été présenté à la suite de consultations communautaires à grande échelle.

En septembre 2000, la Conférence des juges de l'Ontario et l'Association canadienne des juges de cours provinciales se sont réunies à Ottawa pour une conférence commune qui a traité, entre autres, des questions de pauvreté ainsi que des questions touchant la justice autochtone.

Étant donné l'engagement de la Cour dans le domaine de la formation portant sur le contexte social, la Conférence des juges de l'Ontario a créé un comité spécial sur l'égalité pour faire en sorte que les programmes de formation des associations tiennent compte des questions touchant le contexte social et leur accordent une place permanente.

5. PROGRAMME DE FORMATION EN MILIEU UNIVERSITAIRE. Ce programme, habituellement tenu au printemps pendant 5 jours, dans une université ou un milieu semblable, offre à environ 30 à 35 juges l'occasion d'examiner en profondeur des questions de formation en droit pénal dans un milieu plus universitaire.

2. SÉMINAIRES PRÉ-RETRAITE : Ce programme de deux jours et demi, conçu à l'intention des juges qui s'approchent de l'âge de la retraite (et de leur conjoint), aborde la question de la transition de la magistrature à la retraite. Il est donné à Toronto lorsque le nombre de participants le justifie.

3. PROGRAMME DE COMMUNICATION

JUDICIAIRE. En mars 1998, la Cour de justice de l'Ontario a retenu les services des professeurs Gordon Zimmerman et Alayne Castiel, de l'Université du Nevada, pour la présentation d'un programme de formation sur la communication judiciaire. Ce programme comprenait des activités dirigées et des discussions sur les communications verbales et non verbales, l'écoute et les problèmes connexes. Au cours du programme, les juges participants étaient enregistrés individuellement sur bande vidéo et leurs techniques de communication étaient analysées. Ce programme, qui a été offert à 25 juges de la Cour de justice de l'Ontario, devait faire office de projet pilote en vue des séminaires futurs sur la communication judiciaire qui seront donnés dans la mesure où l'on disposera des fonds et du temps voulus. Le Secrétaire a présenté la première de ces conférences en mars 2000. Seize juges de la Cour de justice y ont participé ainsi que deux juges représentant l'Association canadienne des juges de cours provinciales. Ces derniers ont été invités à observer le programme et à y participer dans le contexte d'une évaluation visant son utilisation éventuelle dans d'autres provinces.

Ce programme a été organisé, élaboré et présenté par le professeur Neil Gold en collaboration avec son associé Frank Borowicz qui a adapté le projet pilote au rôle spécifique d'un juge de première instance dans un tribunal canadien. Le programme a été présenté de nouveau en mars 2002 à 21 autres juges de la Cour de justice de l'Ontario.

4. PROGRAMMES SUR LE CONTEXTE SOCIAL : La Cour de justice de l'Ontario présente d'importants programmes portant sur le contexte social. Le premier de ces programmes, intitulé *Égalité des sexes*, a été offert à l'automne 1992. On a eu recours à des ressources externes

Dès leur nomination, tous les juges ont un accès égal à un certain nombre de ressources qui ont une incidence directe ou indirecte sur les activités de la Cour de justice de l'Ontario. Ils ont notamment accès à des textes juridiques, un service de recueils de jurisprudence, au Centre de recherche de la Cour de justice de l'Ontario (voir ci-après), à des cours d'information et des cours sur *Quicklaw* (base de données et système de recherche juridiques informatisés).

2. FORMATION CONTINUE

Les programmes de formation continue offerts aux juges de la Cour de justice de l'Ontario se divisent en deux catégories :

- 1) Les programmes présentés par la Conférence des juges de l'Ontario qui, habituellement, sont d'un intérêt particulier pour les juges dans les domaines du droit pénal et du droit de la famille.
- 2) Les programmes présentés par le Secrétariat de la formation.

1. LES PROGRAMMES DE LA CONFÉRENCE DES JUGES DE L'ONTARIO

Les programmes offerts par la Conférence des juges de l'Ontario constituent le **programme de base** de la formation offerte par la Cour de justice de l'Ontario. La Conférence des juges de l'Ontario a deux comités de formation (sur le droit pénal et sur le droit de la famille respectivement) composés d'un certain nombre de juges parmi lesquels une personne est habituellement nommée à la présidence de la formation. Ces comités se réunissent selon les besoins et travaillent tout au long de l'année à la planification, à l'élaboration et la présentation de programmes de formation de base.

La Conférence des juges de l'Ontario offre trois programmes de formation en droit de la famille : en janvier (Institut de perfectionnement des juges), en mai (parallèlement à l'assemblée annuelle de la Cour) et en septembre. De manière générale, on y traite les sujets suivants : a) la protection de l'enfance et b) le droit de la famille (garde, droits de visite et pensions alimentaires). D'autres sujets, notamment le

II. LES PROGRAMMES DU SECRÉTARIAT

Les programmes planifiés et présentés par le Secrétariat de la formation tendent à traiter de sujets qui ne relèvent principalement du droit pénal ni du droit de la famille ou qui peuvent être présentés plus d'une fois à différents groupes de juges.

1. RÉDACTION DE JUGEMENTS : Il s'agit d'un

programme de deux jours, présenté à un groupe d'une dizaine de juges, selon les fonds disponibles. Dernièrement, deux séminaires ont été présentés annuellement en février au bureau du juge en chef par M. Edward Berry, professeur à l'Université de Victoria.

Au cours de l'exercice 1997-1998, le Secrétariat de la formation a passé un contrat avec le professeur Berry pour la préparation d'un manuel de rédaction de jugements à l'intention des juges de la Cour. Ce document a été préparé et distribué à tous les juges de la Cour. Une deuxième édition a vu le jour.

perfectionnement des compétences, la gestion des dossiers, les modifications législatives et le contexte social sont incorporés au programme à mesure que le besoin se fait sentir. Chaque programme dure de deux à trois jours et tous les juges qui siègent dans des tribunaux de la famille ont le droit d'y participer et sont encouragés à le faire.

Deux programmes importants en droit pénal sont également présentés chaque année :

- a) Un séminaire régional de trois jours est organisé annuellement en octobre et novembre dans quatre localités de la province. Ces séminaires traitent généralement de sujets comme la détermination de la peine et le droit de la preuve, bien qu'une variété d'autres sujets puissent également être inclus. Des programmes similaires sont présentés dans chacune des quatre localités régionales.
- b) Un séminaire de formation de deux jours et demi est offert au mois de mai, parallèlement à l'assemblée annuelle de la Cour de justice de l'Ontario. Tous les juges qui siègent dans des tribunaux criminels ont le droit d'y participer et sont encouragés à le faire.

La Cour de justice de l'Ontario organise un séminaire de formation d'une journée pour les nouveaux juges, peu de temps après leur nomination. Ce séminaire traite de questions pratiques touchant l'accès à la magistrature, y compris la déontologie judiciaire, le comportement et les actions en salle d'audience et les ressources disponibles. Ce programme est présenté au bureau du juge en chef deux fois l'année.

À sa nomination, la ou le juge est affecté par le juge en chef à l'une des sept régions de la province. Le juge principal régional doit ensuite l'affecter au sein de cette région. Suivant sa formation et son expérience, la ou le juge se voit affecté pendant quelque temps (habituellement plusieurs semaines avant son assementation) à observer des juges principaux plus expérimentés ou à suivre le déroulement de certaines audiences. Durant cette période, le nouveau juge ou la nouvelle juge assiste aux délibérations dans la salle d'audience, se rend avec des juges d'expérience dans leur cabinet et a ainsi l'occasion de se familiariser avec ses nouvelles responsabilités.

Au cours de la première année suivant leur nomination, ou dès que possible par la suite, les nouveaux juges participent au programme de formation des nouveaux juges, présenté par l'Association canadienne des juges de cours provinciales (ACJCP) à Lac Carling, dans la province de Québec. De nature pratique, ce programme intensif d'une semaine est principalement axé sur le droit pénal, avec certaines références au droit de la famille. Durant la première année qui suit leur nomination, on encourage également les juges à participer à tous les programmes de formation qui touchent leur(s) domaine(s) de spécialisation qui sont offerts par la Cour de justice de l'Ontario. (Ces programmes figurent à la rubrique « La formation continue ».

À sa nomination, chaque juge est invité à participer à un programme de mentorat mis en place par la Conférence des juges de l'Ontario. Les nouveaux juges ont également l'occasion (comme tous les juges) de s'entretenir à tout moment avec leurs collègues des questions qui les préoccupent ou qui les intéressent.

6. promouvoir la compréhension du perfectionnement des juges;
7. favoriser le désir permanent d'apprendre et la réflexion
8. établir et maintenir des structures et des systèmes pour mettre en œuvre le mandat et les objectifs du Secrétaire;
9. évaluer le processus et les programmes de formation.

Le Secrétaire de la formation fournit un soutien administratif et logistique aux programmes de formation offerts à la Cour de justice de l'Ontario. Il examine et approuve en outre tous les programmes de formation puisqu'il est responsable de l'affectation des fonds servant à les financer.

Le plan de formation actuellement offert aux juges de la Cour de justice de l'Ontario (Division provinciale) se divise en deux parties :

1. Formation de première année.
2. Formation continue.

1. FORMATION DE PREMIÈRE ANNÉE

À sa nomination, chaque juge de la Cour de justice de l'Ontario reçoit un certain nombre de textes et documents, notamment :

- *Propos sur la conduite des juges* (Conseil canadien de la magistrature)
- *Code criminel* Martin
- *Législation sur le droit de la famille de la Cour de justice de l'Ontario*
- *La conduite d'un procès*
- *Manuel du juge*
- *Règles en matière de droit de la famille*
- *La rédaction des motifs*
- *Principes de déontologie judiciaire* (Conseil canadien de la magistrature)

COUR DE JUSTICE DE L'ONTARIO PLAN DE FORMATION CONTINUE

Les objectifs du Plan de formation continue de la Cour de justice de l'Ontario sont les suivants :

1. Maintenir et développer la compétence professionnelle;
2. Maintenir et développer la sensibilisation aux questions sociales;
3. Promouvoir le développement personnel.

Le plan offre à chaque juge l'occasion de bénéficier d'une dizaine de jours de formation continue par année civile dans des domaines variés, dont le droit substantiel, la preuve, la *Charte des droits*, le perfectionnement des compétences et le contexte social. Bien qu'un grand nombre des programmes auxquels participent les juges de la Cour de justice de l'Ontario soient élaborés et présentés par des juges de la Cour, on a souvent recours à des ressources externes pour la planification et la présentation des programmes. La plupart des programmes de formation font largement appel à des avocats, à des fonctionnaires, à des agents d'exécution de la loi, à des professeurs et à d'autres professionnels. On encourage par ailleurs les juges à choisir des programmes externes qui les intéressent et à y participer pour leur propre bénéfice et celui de la Cour.

SECRÉTARIAT DE LA FORMATION

La coordination de la planification et de la présentation des programmes de formation est assurée par le Secrétariat de la formation. Ce dernier est composé des personnes suivantes : le juge en chef, en sa capacité de président (d'office), quatre juges nommés par le juge en chef et quatre juges nommés par la Conférence des juges de l'Ontario. Les avocats-rechercheurs de la Cour de justice de l'Ontario agissent à titre consultatif. Le Secrétariat se réunit environ quatre fois par an pour examiner les questions portant sur la formation et présenter ses conclusions au juge en chef. Le mandat et les objectifs du Secrétariat sont les suivants :

Les objectifs du Secrétariat de la formation sont les suivants :

- favoriser la formation en tant que moyen de promouvoir l'excellence;
- soutenir et encourager les programmes qui entretiennent et développent la sensibilité aux réalités sociales, éthiques et culturelles.

Le mandat du Secrétariat de la formation est de favoriser les expériences éducatives qui encouragent les juges à se pencher sur leurs pratiques professionnelles, à accroître leurs connaissances de fond et à s'engager dans une formation autonome permanente. Pour répondre aux besoins d'une magistrature indépendante, le Secrétariat de la formation :

1. stimuler le perfectionnement professionnel et personnel;
2. veiller à ce que la formation réponde aux besoins et intérêts de la magistrature provinciale;
3. appuyer et encourager les programmes qui assurent un degré élevé de compétence et de connaissances dans les domaines de la preuve, de la procédure et du droit substantiel;
4. mieux faire connaître les structures et les ressources des services communautaires et les sociaux susceptibles d'appuyer et de compléter les programmes de formation et le travail des tribunaux;
5. favoriser la mise à contribution et la participation actives des juges à toutes les étapes de la conceptualisation, de l'élaboration, de la planification, de la prestation et de l'évaluation des programmes.

ANNEXE « C »

COUR DE JUSTICE DE L'ONTARIO
PLAN DE FORMATION CONTINUE

Classement des dossiers

Une fois que les parties ont été avisées de la décision du CMO, le dossier original de la plainte est rangé dans un classeur verrouillé avec la mention « classe ». Les membres du sous-comité des plaintes retournent leur exemplaire du dossier au greffier pour qu'il soit détruit ou l'informent, par écrit, qu'ils l'ont détruit eux-mêmes. Si l'exemplaire d'un membre ou un avis écrit de sa destruction ne sont pas reçus dans les deux semaines qui suivent la réunion du comité d'examen, le personnel du CMO prend contact avec le membre du sous-comité des plaintes pour lui rappeler qu'il doit détruire son exemplaire du dossier, et en aviser le CMO par écrit, ou le renvoyer au CMO, par message, pour qu'il soit déchiqueté.



final et l'ébauche de lettre au plaignant soumis aux fins d'approbation ne contiennent pas de renseignements susceptibles d'identifier le plaignant ni le juge visé par la plainte. Un double du résumé final est déposé dans chaque dossier de plainte classé ainsi qu'un double de la lettre finale au plaignant indiquant de quelle façon la plainte a été réglée.

Avis de décision Notification des parties

Une fois que l'ébauche de lettre au plaignant a été approuvée par le sous-comité des plaintes chargé de l'enquête et par le comité d'examen, une lettre finale est préparée et envoyée au plaignant.

Dans les cas où la plainte est rejetée, le plaignant est avisé de la décision du CMO, motifs à l'appui, comme requis à l'alinéa 51.4 de la Loi sur les tribunaux judiciaires.

Le CMO a distribué une formule à tous les juges, demandant à chacun d'indiquer au CMO les circonstances dans lesquelles le juge désire être avisé des plaintes dont il fait l'objet et qui sont rejetées. Le CMO a aussi distribué une formule d'adresse à tous les juges pour qu'ils indiquent au CMO l'adresse à laquelle la correspondance concernant les plaintes doit être envoyée.

Les juges à qui l'on a demandé de répondre à une plainte ou qui, à la connaissance du CMO, sont d'une autre façon au courant de la plainte, sont avisés par téléphone de la décision du CMO. Une lettre confirmant la façon dont la plainte a été réglée est également envoyée au juge conformément à ses instructions.

pour lui faire savoir quels dossiers assignés au sous-comité des plaintes sont prêts, le cas échéant, à être renvoyés devant un comité d'examen. Le sous-comité des plaintes fournit également une copie dûment remplie et lisible des pages 2 et 3 de la formule de réception des plaintes pour chaque dossier prêt à être renvoyé, et indique quels autres documents au dossier, outre la plainte, doivent être copiés et soumis aux membres du comité d'examen. Aucun renseignement susceptible d'identifier soit le plaignant, soit le juge visé par la plainte n'est inclus dans les documents communiqués aux membres du comité d'examen.

Au moins un membre d'un sous-comité des plaintes est présent lorsque le rapport du sous-comité est présenté à un comité d'examen. Les membres du sous-comité des plaintes peuvent aussi participer par téléconférence au besoin.

Comités d'examen

Le président du comité d'examen veille à ce qu'au moins une copie de la page pertinente de la formule de réception des plaintes soit remplie et remise au greffier à la fin de l'audience du comité d'examen.

Documents préparés pour les réunions

Tous les documents préparés pour les réunions du Conseil de la magistrature de l'Ontario sont confidentiels et ne peuvent ni être divulgués ni rendus publics.

Lorsqu'un sous-comité des plaintes indique qu'il est prêt à présenter un rapport à un comité d'examen, le greffier prépare et fait circuler une ébauche de résumé du dossier et une ébauche de lettre au plaignant aux membres du sous-comité des plaintes qui présente le rapport et aux membres du comité d'examen chargé d'entendre le rapport. L'ébauche de résumé du dossier et l'ébauche de lettre au plaignant sont communiquées aux membres pour qu'ils puissent les examiner au moins une semaine avant la date de la réunion prévue du Conseil de la magistrature. Des modifications peuvent être apportées à ces documents après discussion entre les membres du Conseil de la magistrature lors de la réunion tenue pour étudier les recommandations du sous-comité des plaintes sur les différents dossiers. L'ébauche de résumé et le résumé

l'aider dans son enquête. Si nécessaire, le greffier détermine auprès du plaignant, à quelle étape en est l'instance judiciaire avant d'ordonner une transcription. Le sous-comité des plaintes peut demander au greffier de laisser le dossier en suspens dans l'attente du règlement de l'affaire devant les tribunaux.

Si un sous-comité des plaintes requiert une réponse du juge, il enjoint au greffier de demander au juge de répondre à la question ou à la préoccupation particulière soulevée dans la plainte. Une copie de la plainte, la transcription (le cas échéant) et tous les documents pertinents au dossier sont communiqués au juge avec la lettre demandant la réponse. Un juge a 30 jours à compter de la date de la lettre demandant une réponse pour répondre à la plainte. Si une réponse n'est pas reçue dans les 30 jours, les membres du sous-comité des plaintes sont prévenus et une lettre de rappel est envoyée au juge par courrier recommandé. Si aucune réponse n'est reçue dans les dix jours qui suivent la date du courrier recommandé, et que le sous-comité des plaintes est convaincu que le juge est au courant de la plainte et dispose de tous les détails la concernant, il poursuit en l'absence d'une réponse. Toute réponse à la plainte fournie par le juge à cette étape de la procédure est réputée avoir été faite sous toutes réserves et ne peut pas être utilisée lors d'une audience.

La transcription ou la bande sonore des preuves et les réponses des juges aux plaintes sont envoyées aux membres du sous-comité des plaintes par messagerie, à moins d'indication contraire de leur part.

Un sous-comité des plaintes peut inviter toute partie ou tout témoin à le rencontrer ou à communiquer avec lui au cours de son enquête.

Le secrétaire du CMO transcrit les lettres de plaintes qui sont écrites à la main et apporte aux membres du sous-comité des plaintes le soutien dont ils ont besoin en matière de secrétariat.

Un sous-comité des plaintes peut demander au greffier d'engager des personnes, notamment des avocats, ou de retenir leurs services, pour l'aider dans la conduite de son enquête (alinéa 51.4(5)).

Avant chaque réunion prévue du CMO, un membre de chaque sous-comité des plaintes est chargé de contacter le greffier adjoind avant une date déterminée

QUESTIONS ADMINISTRATIVES

Réception des plaintes

- Lorsqu'une personne*, qui veut saisir d'une plainte le Conseil de la magistrature de l'Ontario (CMO) ou un membre du Conseil agissant à ce titre, fait une allégation orale à cet effet, elle est encouragée à déposer la plainte par écrit. Si cette personne ne soumet pas une plainte par écrit au Conseil de la magistrature dans les 10 jours qui suivent l'allégation, le greffier, après consultation avec un avocat et avec le membre du Conseil de la magistrature auquel l'allégation a été faite, transcrit les détails de la plainte par écrit. Ce résumé écrit de l'allégation est envoyé par courrier recommandé à l'auteur de l'allégation, si son adresse est connue, accompagné d'un avis indiquant que l'allégation, telle que résumée, devient la plainte sur la base de laquelle la conduite du juge provincial en cause sera évaluée. Le dixième jour suivant l'envoi de ce résumé, si l'auteur de l'allégation n'a pas répondu, le résumé écrit est réputé être une plainte alléguant qu'il y a eu une mauvaise conduite de la part du juge provincial. Si la plainte est du ressort du CMO (tout juge ou protonotaire provincial – à temps plein ou à temps partiel), un dossier de plainte est ouvert et assigné à un sous-comité des plaintes de deux membres aux fins d'examen et d'enquête (les plaintes qui ne sont pas du ressort du CMO sont renvoyées à l'organisme approprié).
- Le greffier examine chaque lettre de plainte qu'il reçoit et, si la plainte justifie l'ouverture et l'assignation d'un dossier, le greffier détermine s'il est nécessaire ou non d'ordonner une transcription ou une bande sonore de l'instance judiciaire, ou les deux, aux fins d'examen par le sous-comité des plaintes et, dans l'affirmative, demande au greffier d'ajouter de les ordonner.
- La plainte est ajoutée à la formule de repérage, un numéro séquentiel est assigné au dossier, une lettre d'accusé de réception est envoyée au plaignant dans la semaine qui suit la réception de sa plainte, la page un de la formule de réception des plaintes est remplie, et une lettre.

Sous-comité des plaintes

- Pour faciliter la lecture du texte, le masculin est utilisé pour désigner les deux sexes.
 - accompagnée des recommandations du greffier concernant le dossier, le cas échéant, est préparée à l'intention des membres du sous-comité des plaintes. Un double de tous les documents est placé dans le dossier des plaintes du bureau et dans le dossier des plaintes de chacun des membres. Un rapport d'étape sur tous les dossiers de plaintes en cours – dont tout renseignement personnel a été supprimé – est communiqué à chaque membre du CMO lors de chacune de ses réunions ordinaires.
- Les membres du sous-comité des plaintes s'efforcent de faire le point sur la situation de tous les dossiers ouverts qui leur sont assignés lorsqu'ils reçoivent leur rapport d'étape tous les mois, et ils prennent les mesures nécessaires pour pouvoir soumettre le dossier au CMO, aux fins d'examen, le plus vite possible.
- Une lettre informant les membres du sous-comité des plaintes qu'un nouveau dossier leur a été assigné leur est envoyée à titre d'information, dans la semaine qui suit l'ouverture et l'assignation du dossier. Les membres du sous-comité des plaintes sont invités à indiquer s'ils veulent que leur copie du dossier leur soit délivrée ou qu'elle soit conservée dans le tiroir verrouillé de leur classifieur dans le bureau du CMO. Tout membre qui demande qu'une copie du dossier lui soit délivrée doit en accuser réception. Les membres du sous-comité des plaintes peuvent se présenter au bureau du CMO pour examiner leurs dossiers pendant les heures normales de bureau.
- Les membres du sous-comité des plaintes s'efforcent d'examiner les dossiers qui leur sont assignés et d'en discuter dans le mois qui suit leur réception du dossier. Tous les documents (transcriptions, audiocassettes, dossiers des tribunaux, etc.) qu'un sous-comité des plaintes désire examiner en rapport avec une plainte sont obtenus en son nom par le greffier, et non individuellement par les membres du sous-comité.
- Suivant la nature de la plainte, le sous-comité des plaintes peut demander au greffier d'ordonner une transcription ou audiocassette de la preuve pour

Plainte contre un protonotaire

par. 87.1 (4)

et (11) s'appliquent avec les adaptations nécessaires. Le paragraphe 87 (3) de la Loi sur les tribunaux judiciaires précise que les articles 44 à 51.12 s'appliquent, avec les adaptations nécessaires, aux protonotaires de la même manière qu'aux juges provinciaux.

1. Un des membres du Conseil de la magistrature provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le juge qui doit remplacer ce juge.
2. Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.
3. Les recommandations du sous-comité des plaintes concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, à qui les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

PLAINTÉ

Lorsque le Conseil de la magistrature traite une plainte portée contre un protonotaire, les dispositions spéciales suivantes s'appliquent :

1. Un des membres du Conseil de la magistrature provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le protonotaire qui doit remplacer le juge.
2. Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.
3. Les recommandations du sous-comité concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, auquel les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

Si le juge en chef de la Cour de justice de l'Ontario ou le juge principal régional nommé au Conseil de la magistrature fait l'objet d'une plainte, le juge en chef de la Cour de justice de l'Ontario ou un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef adjoint ou du juge principal régional, selon le cas, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

par. 50 (2)(b)

Si le juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional nommé au Conseil de la magistrature fait l'objet d'une plainte, le juge en chef de la Cour de justice de l'Ontario ou un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef adjoint ou du juge principal régional, selon le cas, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

par. 50 (3)

Plainte contre un juge de la Cour des petites créances

Le paragraphe 87.1 (1) de la Loi sur les tribunaux judiciaires et certaines dispositions spéciales s'appliquent aux juges provinciaux qui ont été affectés à la Cour provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990.

PLAINTES

Lorsque le Conseil de la magistrature traite une plainte portée contre un juge provincial qui a été affecté à la Cour provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990, les dispositions spéciales suivantes s'appliquent :

1. Un des membres du Conseil de la magistrature provinciale est remplacé par un juge provincial qui a été affecté à la Cour provinciale

Plainte contre le juge en chef ou certains autres juges

par. 51.2 (8)

simultanée des témoignages, des observations ou des discussions qui ont lieu dans l'autre langue et à une traduction des documents déposés ou des motifs ou rapports rédigés dans l'autre langue.

par. 50 (1)(a) et (b)

Si le juge en chef de la Cour de justice de l'Ontario fait l'objet d'une plainte, le juge en chef de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise. Le juge en chef adjoint de la Cour de justice de l'Ontario nommé au Conseil préside les réunions et les audiences du Conseil au lieu du juge en chef et nomme les membres temporaires du Conseil jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

par. 50 (1)(c)

Tout renvoi de la plainte qui serait par ailleurs fait au juge en chef de la Cour de justice de l'Ontario (par un sous-comité des plaintes après son enquête, par le Conseil de la magistrature ou un comité d'examen de celui-ci après son examen du rapport du sous-comité des plaintes ou le renvoi de la plainte ou par le Conseil de la magistrature après une médiation) est fait au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario, jusqu'à ce qu'une décision définitive concernant la plainte contre le juge en chef de la Cour de justice de l'Ontario ait été prise.

par. 50 (2)(a)

plainte ait été prise.

par. 51.2 (3)

L'audience sur une plainte tenue par le Conseil de la magistrature est menée en anglais, mais le plaignant ou le témoin qui parle français ou le juge qui fait l'objet d'une plainte et qui parle français a droit, sur demande, avant l'audience, à une traduction en français des documents qui sont en anglais et qui seront examinés à l'audience; aux services d'un interprète à l'audience; et à l'interprétation simultanée en français des parties de l'audience qui se déroulent en anglais.

par. 51.2 (4)

Le droit à la traduction et aux services d'un interprète s'applique également aux médiations et à l'examen de la question de l'indemnisation, s'il y a lieu.

par. 51.2 (5)

Lorsque le plaignant ou le témoin parle français ou que le juge qui fait l'objet de la plainte parle français, le Conseil de la magistrature peut ordonner que l'audience ou la médiation sur la plainte soit bilingue s'il est d'avis qu'elle peut être menée convenablement de cette manière.

par. 51.2 (6)

Un ordre prévu au paragraphe 5) peut s'appliquer à une partie de l'audience ou de la médiation, auquel cas les paragraphes 7) et 8) ci-dessous s'appliquent avec les adaptations nécessaires.

Au cours d'une audience ou d'une médiation bilingue :

- a) les témoignages oraux et les observations orales peuvent être présentés en français ou en anglais et ils sont consignés dans la langue de présentation;
- b) les documents peuvent être déposés dans l'une ou l'autre langue;
- c) dans le cas d'une médiation, les discussions peuvent avoir lieu dans l'une ou l'autre langue;
- d) les motifs d'une décision ou le rapport du médiateur, selon le cas, peuvent être rédigés dans l'une ou l'autre langue.

par. 51.2 (7)

Lors d'une audience ou d'une médiation bilingue, si le plaignant ou le juge ne parle qu'une des deux langues, il a droit, sur demande, à l'interprétation

DELAI DE REPONSE

Le conseil de la magistrature, lorsqu'il avisera le ministre d'une demande de prise en compte des besoins d'un juge, demandera au ministre de répondre dans les trente (30) jours civils suivant la réception de l'avis. Dans ce délai, le ministre avisera le Conseil de la magistrature de son intention de répondre ou non à cette demande. Si le ministre prévoit de faire des observations sur la demande, il doit le faire dans les soixante (60) jours suivant son accusé de réception de la demande et de l'indication de son intention de répondre. Le Conseil de la magistrature précisera dans son avis au ministre que si celui-ci ne présente pas d'observation et n'accuse pas réception de l'avis, une ordonnance sera rendue pour prendre en compte les besoins spéciaux du juge selon la requête de celui-ci et la conclusion initial du Conseil.

REUNION POUR DECIDER DU CONTENU L'ORDONNANCE

Lorsque le délai indiqué dans l'avis au ministre s'est écoulé ou, le cas échéant, lorsqu'il reçoit des observations du ministre concernant un « préjudice injustifié » éventuel, le Conseil de la magistrature de l'Ontario doit se réunir dès que possible pour décider du contenu de l'ordonnance qu'il va rendre pour prendre en cause les besoins du juge. Dans ses conclusions, le Conseil de la magistrature tiendra compte de la demande et des pièces justificatives présentées par le juge ainsi que des observations, s'il y en a, concernant la question du « préjudice injustifié ».

COPIE DE L'ORDONNANCE

On remettra une copie de l'ordonnance au juge et à toute personne touchée par cette ordonnance dans les dix (10) jours civils suivant la date à laquelle l'ordonnance est rendue.

CONSIDERATIONS SPECIALES

Plaignants ou juges francophones

Les plaintes contre des juges provinciaux peuvent être portées en français ou en anglais.

par. 51.2 (2)

jurisprudence en matière de Droits de la personne pour ce qui est de la définition d'une « invalidité » (ou handicap).
Le Conseil de la magistrature considérera qu'une condition correspond à une invalidité si elle peut nuire à l'aptitude du juge à s'acquitter des obligations essentielles de son poste.

NOTIFICATION DU MINISTRE

S'il est convaincu que la condition répond au critère de qualification d'une invalidité et s'il envisage de rendre une ordonnance pour prendre en compte cette invalidité, le Conseil de la magistrature doit fournir des que possible au Procureur général une copie de la demande de prise en compte de l'invalidité, accompagnée du rapport du sous-comité des besoins spéciaux. Ce rapport doit inclure tous les éléments dont le sous-comité a tenu compte pour formuler son opinion sur les coûts qu'entraînerait la prise en compte des besoins du requérant.

OBSERVATIONS QUANT A UN PREJUDICE JUSTIFIE

Le Conseil de la magistrature invitera le ministre à faire des observations, par écrit, sur le fait qu'une ordonnance que le Conseil envisage de rendre pour la prise en compte des besoins d'un juge ayant une invalidité causera ou non un « préjudice injustifié » au ministre du Procureur général ou à tout autre personne touchée par l'ordonnance en question. Le Conseil de la magistrature considérera qu'il appartient au ministre, ou à toute autre personne que l'ordonnance obligerait à tenir compte des besoins du juge, de prouver que cette prise en compte des besoins causerait un préjudice injustifié.

Pour déterminer s'il y a ou non préjudice injustifié, le Conseil de la magistrature s'appuiera sur la jurisprudence en matière de Droits de la personne concernant ce sujet, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

SOUS-COMITÉ DES BESOINS SPÉCIAUX

Lorsqu'il reçoit une demande, le Conseil convoque un sous-comité (« sous-comité des besoins spéciaux ») du Conseil comprenant deux membres du Conseil, l'un étant juge et l'autre non. Dès que possible, ce sous-comité rencontre le requérant ainsi que toute personne qui, de l'avis du sous-comité, pourrait être ordonnée de tenir compte des besoins du juge; le sous-comité engage les experts et conseillers dont il pourrait avoir besoin pour formuler une opinion sur les aspects suivants et en faire part au Conseil :

- la durée pendant laquelle les dispositions matérielles ou le service seraient requis pour tenir compte de l'invalidité du juge;
- le coût approximatif des dispositions matérielles ou du service requis pour tenir compte de l'invalidité du juge pendant la durée que ces dispositions ou ce service seraient requis (p. ex., quotidien, hebdomadaire, mensuel, annuel).

RAPPORT DU SOUS-COMITÉ DES BESOINS SPÉCIAUX

Le sous-comité des besoins spéciaux doit inclure dans le rapport qu'il présente au Conseil tous les éléments dont il a tenu compte pour formuler son opinion sur les coûts qu'entraînerait la prise en compte des besoins du requérant.

Si, après avoir rencontré le requérant, le sous-comité est d'avis que celui-ci ou celles-ci ne souffre pas d'une invalidité, il doit en informer le conseil dans son rapport.

EXAMEN INITIAL DE LA DEMANDE ET RAPPORT

Le Conseil de la magistrature doit se réunir dès que possible afin d'examiner la demande du requérant et le rapport du sous-comité des besoins spéciaux et déterminer si la demande entre dans le cadre d'une obligation prévue par la loi de tenir compte des besoins spéciaux sans préjudice injustifié.

CRITÈRE DE QUALIFICATION EN TANT QU'INVALIDITÉ

Pour déterminer si une ordonnance de prise en compte de l'invalidité d'un juge est justifiée ou non, le Conseil de la magistrature s'appuiera sur la

ORDONNANCE DE PRISE EN COMPTE RENDUE À L'ISSUE D'UNE AUDIENCE

Si, après avoir tenu une audience portant sur une plainte, le Conseil de la magistrature conclut que le juge qui faisait l'objet de la plainte n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste, mais qu'il serait en mesure de le faire s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

par. 51.6 (13)

DIRECTIVES ET RÈGLES DE PROCÉDURE

Les directives et règles de procédures qui suivent ont été établies par le Conseil de la magistrature de l'Ontario relativement à la prise en compte des invalidités.

PRÉSENTATION DE LA REQUÊTE PAR ÉCRIT

Un juge qui souhaite que ses besoins soient pris en compte doit présenter une requête écrite contenant les renseignements suivants :

- une description de l'invalidité à prendre en compte;
- une description des obligations essentielles du poste pour lesquelles la prise en compte des besoins du juge est nécessaire;
- une description des dispositions matérielles ou du service requis pour tenir compte de l'invalidité du juge;
- une lettre signée par un docteur ou un autre professionnel de la santé qualifié (chiropraticien, physiothérapeute, etc.) justifiant la demande du juge;
- la demande et les pièces justificatives ne peuvent pas être utilisées, sans le consentement du requérant, aux fins d'une enquête ou d'une audience autre que l'audience tenue pour examiner la question de la prise en compte des besoins du juge;
- le Conseil de la magistrature de l'Ontario ne peut divulguer ou rendre publics la demande et les pièces justificatives sans le consentement du requérant.

DROIT DE VOTE DU PRÉSIDENT

Le président a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

par. 49 (10)

QUORUM

Huit membres du Conseil de la magistrature, y compris le président, constituent le quorum pour les réunions qui portent sur une demande de prise en compte d'une invalidité. Au moins la moitié des membres présents doivent être des juges et au moins quatre autres membres ne doivent pas être des juges.

par. 49 (13)

AIDE D'EXPERTS

Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider.

par. 49 (21)

DOSSIERS CONFIDENTIELS

Le Conseil de la magistrature ou un sous-comité peut ordonner que tout renseignement ou document relatif à une médiation ou à une réunion ou audience du Conseil qui a été tenue à huis clos soit confidentiel et ne soit pas divulgué ni rendu public. Ceci s'applique que les renseignements ou les documents soient en la possession du Conseil de la magistrature, du procureur général ou d'une autre personne. Le Conseil de la magistrature ou son sous-comité ne peut pas interdire la divulgation de renseignements ou de documents dont la divulgation par le Conseil de la magistrature est exigée par la *Loi sur les tribunaux judiciaires* ou qui n'ont pas été traités comme des documents ou renseignements confidentiels et n'ont pas été préparés exclusivement aux fins de la médiation ou d'une réunion ou d'une audience du Conseil.

par. 49 (24), (25) et (26)

Le Conseil de la magistrature établit et rend publiques ses propres règles de procédure, y compris... des directives et les règles de procédure relatives à la prise en compte des invalidités.

par. 51.1 (1)

par. 45 (2)

moins qu'il ne soit tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du ou de la juge dans la mesure qui permette à celui-ci ou celle-ci de s'acquitter de ces obligations.

PRÉJUDICE INJUSTIFIÉ

Le paragraphe 45 (2) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

par. 45 (3)

DIRECTIVES ET RÈGLES DE PROCÉDURE

Lorsqu'il traite des requêtes prévues au présent article, le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

par. 45 (4)

PARTICIPATION

Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe 45 (2) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

par. 45 (5)

LA COURONNE EST LIÉE

L'ordonnance rendue par le Conseil de la magistrature pour tenir compte des besoins d'un juge lie la Couronne.

par. 45 (6)

PRÉSIDENCE DES RÉUNIONS

Le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel désigné par le juge en chef, préside les réunions qui portent sur la prise en compte d'une invalidité.

par. 49 (8)

MODIFICATIONS APPORTÉES À LA

LOI SUR L'ACCÈS À L'INFORMATION

ET LA PROTECTION DE LA VIE PRIVÉE

L'article 65 de la Loi sur l'accès à l'information et la protection de la vie privée est modifié par adjonction des paragraphes suivants :

- (4) La présente loi ne s'applique pas à quoi que ce soit qui est compris dans l'évaluation du rendement d'un juge prévue à l'article 51.11 de la Loi sur les tribunaux judiciaires ni aux renseignements recueillis relativement à l'évaluation.

- (5) La présente loi ne s'applique pas à un document du Conseil de la magistrature de l'Ontario, qu'il soit en la possession de celui-ci ou du procureur général, si l'une quelconque des conditions suivantes s'applique :

1. Le Conseil de la magistrature ou son sous-comité a ordonné que le document ou les renseignements qu'il y sont contenus ne soient pas divulgués ni rendus publics.
2. Le Conseil de la magistrature a par ailleurs déterminé que le document est confidentiel.
3. Le document a été préparé relativement à une réunion ou une audience du Conseil de la magistrature qui s'est tenue à huis clos.

PRISE EN COMPTE DES INVALIDITÉS

REQUÊTE D'ORDONNANCE

Le juge provincial qui croit ne pas être en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à moins qu'il ne soit tenu compte de ses besoins peut présenter une requête au Conseil de la magistrature pour que soit rendue une ordonnance pour qu'il soit tenu compte de ces besoins.

par. 45 (1)

OBLIGATION DU CONSEIL DE LA MAGISTRATURE

Si le Conseil de la magistrature conclut qu'un ou une juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à

par. 51.6 (19)

INTERDICTION D'IDENTIFIER LE JUGE

Si, au cours de l'audience sur une plainte, le Conseil de la magistrature a rendu une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte, conformément au paragraphe 51.6 (10) et aux critères établis par le Conseil de la magistrature, et que le Conseil rejette ultérieurement la plainte en concluant qu'elle n'était pas fondée, le juge ne doit pas être identifié dans le rapport sans son consentement et le Conseil de la magistrature ordonne que les renseignements relatifs à la plainte qui pourraient identifier le juge ne soient jamais rendus publics sans le consentement de celui-ci.

par. 51.6 (20)

ORDONNANCE DE NON-DIVULGATION

Le Conseil de la magistrature ou un sous-comité des plaintes peut ordonner que tout renseignement ou document relatif à une médiation ou à une réunion ou audience du Conseil qui a été tenue à huis clos soit confidentiel et ne soit pas divulgué ni rendu public, que les renseignements ou les documents soient en la possession du Conseil de la magistrature, du procureur général ou d'une autre personne.

par. 49 (24) et (25)

EXCEPTION

Les dispositions énoncées ci-dessus ne s'appliquent pas aux renseignements ni aux documents dont la divulgation par le Conseil de la magistrature est exigée par la Loi sur les tribunaux judiciaires ou qui n'ont pas été traités comme des documents ou des renseignements confidentiels et n'ont pas été préparés exclusivement aux fins de la médiation ou d'une réunion ou d'une audience du Conseil.

par. 49 (26)

huis clos, conformément aux paragraphes 51.4 (6), 51.4 (17) et (18). Le Conseil de la magistrature a pour politique, conformément aux paragraphes 51.4 (21) et (22), de ne pas confirmer ni nier qu'il a été saisi d'une plainte donnée, comme le permet le paragraphe 51.3 (5), à moins que le Conseil de la magistrature, ou un comité d'audience de celui-ci, n'ait déterminé que la plainte fera l'objet d'une audience publique.

ENQUÊTE À HUIS CLOS PAR UN SOUS-COMITÉ DES PLAINTES

L'enquête menée sur une plainte par un sous-comité des plaintes se déroule à huis clos. La Loi sur l'exercice des compétences légales ne s'applique pas aux activités du sous-comité liées à l'enquête sur une plainte.

par. 51.4 (6) et (7)

TRAVAUX À HUIS CLOS DU COMITÉ D'EXAMEN

Le Conseil de la magistrature, ou un comité d'examen de celui-ci :

- examine le rapport du sous-comité des plaintes, à huis clos, et peut approuver la décision du sous-comité;

- peut exiger du sous-comité des plaintes qu'il renvoie la plainte au Conseil.

par. 51.4 (17)

Si la plainte est renvoyée au Conseil par un sous-comité des plaintes, le Conseil de la magistrature, ou un comité d'examen de celui-ci, l'examine, à huis clos, et peut, selon le cas :

- tenir une audience;
- rejeter la plainte;
- renvoyer la plainte au juge en chef (en assortissant ou non le renvoi de conditions);
- renvoyer la plainte à un médiateur.

par. 51.4 (18)

RÉVÉLATION DE L'IDENTITÉ DU JUGE AU COMITÉ D'EXAMEN

Si le sous-comité renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience, l'identité du plaignant et celle du juge

qui fait l'objet de la plainte peuvent être révélées au Conseil de la magistrature, ou à un comité d'examen de celui-ci, et la plainte est examinée à huis clos.

par. 51.4 (16) et (17)

POSSIBILITÉ DE TENIR L'AUDIENCE À HUIS CLOS

Le Conseil de la magistrature peut tenir la totalité ou une partie de l'audience à huis clos s'il décide, conformément aux critères établis aux termes du paragraphe 51.1 (1), que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique.

par. 51.6 (7)

INTERDICTION DE DIVULGUER LE NOM DU JUGE

Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

par. 51.6 (8)

ORDONNANCE INTERDISANT LA PUBLICATION

Dans des circonstances exceptionnelles et conformément au paragraphe 51.1 (1), le Conseil de la magistrature peut rendre une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte.

par. 51.6 (10)

CRITÈRES ÉTABLIS

On trouvera aux pages B-11 ci-dessus les critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1) relativement aux paragraphes 51.6 (7), (8) et (10).

RAPPORT AU PROCUREUR GÉNÉRAL

Si le plaignant ou un témoin a demandé que son identité soit dissimulée au cours de l'audience et qu'une ordonnance a été rendue en ce sens aux termes du paragraphe 51.6 (9), il ne doit pas être identifié

Cour de justice de l'Ontario. Il s'applique aussi à un Conseil de la magistrature a maintenu en fonction comme juge en chef ou juge en chef adjoint de la Cour de justice de l'Ontario, ou comme juge provincial.

par. 51.8 (4)

INDEMNITÉ

A L'ISSUE D'UNE DÉCISION CONCERNANT UNE PLAINTÉ

DIVULGATION DU NOM

Dans sa recommandation au procureur général, le Conseil de la magistrature fournit le nom du juge, mais le procureur général ne doit pas le divulguer à moins qu'il n'y ait eu une audience publique sur la plainte ou que le Conseil n'ait, par ailleurs, rendu public le nom du juge.

par. 51.7 (6)

MONTANT ET VERSEMENT DE L'INDEMNITÉ

Le montant de l'indemnité recommandé peut se rapporter à tout ou partie des frais pour services juridiques du juge et est calculé selon un taux pour services juridiques qui ne dépasse pas le taux maximal normalement prévu par le gouvernement de l'Ontario pour des services similaires. Le procureur général verse l'indemnité au juge conformément à la recommandation.

par. 51.7 (7) et (8)

CONFIDENTIALITÉ ET PROTECTION DE LA VIE PRIVÉE

RENSEIGNEMENTS AU PUBLIC

À la demande de toute personne, le Conseil de la magistrature peut confirmer ou nier qu'il a été saisi d'une plainte donnée.

par. 51.3 (5)

POLITIQUE DU CONSEIL DE LA MAGISTRATURE

L'enquête du sous-comité des plaintes sur une plainte est tenue à huis clos, et son rapport sur la plainte ou le renvoi de la plainte au Conseil de la magistrature, ou à un comité d'examen de celui-ci, est examiné à

Lorsqu'il a traité une plainte portée contre un juge provincial, le Conseil de la magistrature étudie la question de savoir si le juge devrait être indemnisé, en totalité ou en partie, pour les frais pour services juridiques qu'il a engagés relativement à la démarche suivie en rapport avec la plainte, y compris l'examen et l'enquête par un sous-comité des plaintes, l'examen du rapport du sous-comité des plaintes par le Conseil de la magistrature, ou un comité d'examen de celui-ci, l'examen du rapport d'un médiateur par le Conseil de la magistrature, ou un comité d'examen de celui-ci, l'audience tenue sur une plainte par le Conseil de la magistrature, ou un comité d'examen de celui-ci, et les services juridiques en rapport avec la question de l'indemnisation. S'il tient une audience sur la plainte, le Conseil de la magistrature lui joint l'examen de la question de l'indemnisation.

par. 51.7 (1) et (2)

EXAMEN PUBLIC OU À HUIS CLOS

L'examen de la question de l'indemnisation est ouvert au public s'il y a eu une audience publique sur la plainte; sinon, l'examen se fait à huis clos.

par. 51.7 (3)

RECOMMANDATION

S'il est d'avis que le juge devrait être indemnisé, le Conseil de la magistrature fait une recommandation en ce sens au procureur général, laquelle recommandation indique le montant de l'indemnité.

par. 51.7 (4)

Destitution des fonctions

DESTITUTION

Un juge provincial ne peut être destitué que si les conditions suivantes sont réunies :

- a) une plainte a été portée à son sujet devant le Conseil de la magistrature;
- b) le Conseil de la magistrature, à l'issue d'une audience, recommande au procureur général la destitution du juge en raison du fait qu'il est devenu incapable de remplir convenablement ses fonctions ou inhabile pour l'une des raisons suivantes :

(i) il est inapte, en raison d'une invalidité, à s'acquitter des obligations essentielles de son poste (si une ordonnance pour qu'il soit tenu compte de ses besoins ne remédierait pas à l'incapacité ou ne pourrait être rendue parce qu'elle causerait un préjudice injustifié à la personne à laquelle il incomberait de tenir compte de ces besoins, ou a été rendue mais n'a pas remédié à l'incapacité);

(ii) il a eu une conduite incompatible avec l'exercice convenable de ses fonctions;

(iii) il n'a pas rempli les fonctions de sa charge.

par. 51.8 (1)

DÉPÔT DE LA RECOMMANDATION

Le procureur général dépose la recommandation du Conseil de la magistrature devant l'Assemblée législative. Si celle-ci ne siège pas, il la dépose dans les quinze jours qui suivent le début de la session suivante.

par. 51.8 (2)

DÉCRET DE DESTITUTION

Le lieutenant-gouverneur peut prendre un décret en vue de la destitution d'un juge provincial sur demande de l'Assemblée législative.

par. 51.8 (3)

APPLICATION

Cet article s'applique aux juges provinciaux qui n'ont pas encore atteint l'âge de la retraite et aux juges provinciaux dont le maintien en fonction après l'âge de la retraite a été approuvé par le juge en chef de la

INTERDICTION D'IDENTIFIER LE JUGE

Si, au cours de l'audience sur une plainte, le Conseil de la magistrature a rendu une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte, aux termes du paragraphe 51.6 (10) et conformément aux critères établis par le Conseil de la magistrature (se reporter à la page B-11 ci-dessus) et que le Conseil de la magistrature rejette ultérieurement la plainte en concluant qu'elle n'était pas fondée, le juge ne doit pas être identifié dans le rapport au procureur général sans son consentement et le Conseil de la magistrature ordonne que les renseignements relatifs à la plainte qui pourraient identifier le juge ne soient jamais rendus publics sans le consentement de celui-ci.

par. 51.6 (20)

Ordonnance pour qu'il soit tenu compte des besoins du juge

Si un facteur de la plainte était qu'une invalidité influait sur le fait que le juge n'est pas en mesure de s'acquitter des obligations essentielles du poste, que cette plainte soit rejetée ou qu'elle donne lieu à quelque autre décision à l'exception d'une recommandation au procureur général de destitution du juge, mais que le juge serait en mesure de s'en acquitter s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations. Le Conseil de la magistrature ne peut rendre cette ordonnance s'il est convaincu que ce fait causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

Le Conseil de la magistrature ne doit pas rendre une ordonnance pour qu'il soit tenu compte des besoins du juge qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

Une ordonnance pour qu'il soit tenu compte des besoins d'un juge rendue par le Conseil de la magistrature lie la Couronne.

par. 51.6 (13), (14), (15), (16) et (17)

(e) décision sur toute revendication de privilège de non-divulgaration à l'égard des éléments de preuve qu'il est prévu de présenter lors de l'audience;

(f) toute question relative aux échéances.

(2) Aucune requête concernant l'une quelconque des mesures de redressement visées dans cet article ne peut être présentée au cours de l'audience sans l'autorisation du Comité d'audience, à moins qu'elle ne porte sur la façon dont l'audience est conduite.

(3) Le Comité d'audience peut, pour tout motif qu'il estime approprié, réduire la limite de temps prévue dans les présentes règles pour la présentation des requêtes avant une audience.

19. Le Comité fixe, dès que raisonnablement possible, la date et le lieu pour la présentation, par les deux parties, de toute requête soumise aux termes du paragraphe 19 I) et prend une décision à ce sujet dès que raisonnablement possible.

APRÈS L'AUDIENCE

Prise d'une décision à l'issue d'une audience

DÉCISION

Une fois qu'il a terminé l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclu ou non que la plainte n'est pas fondée ou, s'il conclut qu'il y a eu inconvénient de la part du juge, il peut, selon le cas :

a) donner un avertissement au juge;

b) réprimander le juge;

c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;

d) ordonner que le juge prenne des dispositions précises, telles suivre une formation ou un traitement, comme condition pour continuer de siéger à titre de juge;

e) suspendre le juge avec rémunération, pendant une période quelle qu'elle soit;

par. 51.6 (11)

COMBINAISON DE SANCTIONS

Le Conseil de la magistrature peut adopter toute combinaison des sanctions susmentionnées, sauf la recommandation au procureur général de destitution du juge, qui ne peut être combinée avec aucune autre sanction.

par. 51.6 (12)

Rapport au procureur général

RAPPORT

Le Conseil de la magistrature peut présenter au procureur général un rapport sur la plainte, l'enquête, l'audience et la décision (sous réserve d'une ordonnance rendue par le Conseil de la magistrature au sujet du maintien du caractère confidentiel des documents) et le procureur général peut rendre le rapport public s'il est d'avis qu'il y va de l'intérêt public.

par. 51.6 (18)

DISSIMULATION DE L'IDENTITÉ

Si le plaignant ou un témoin a demandé que son identité soit dissimulée au cours de l'audience et qu'une ordonnance a été rendue aux termes du paragraphe 51.6 (9), il ne doit pas être identifié dans le rapport au procureur général ou, si l'audience s'est tenue à huis clos, le juge ne doit pas être identifié dans le rapport son nom soit divulgué dans le rapport conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.6 (8) (se reporter à la page B-11 ci-dessus).

par. 51.6 (19)

CONFÉRENCE PRÉPARATOIRE

14. Le Comité peut ordonner de tenir une conférence préparatoire devant un juge qui est membre du Conseil mais ne fait pas partie du Comité qui comprendra les accusations portées contre l'intime, afin de limiter les points en litige et de promouvoir un règlement à l'amiable.

L'AUDIENCE

15. Pour plus de certitude, l'intime a le droit de se faire représenter par un avocat ou d'agir en son propre nom pour toute audience tenue conformément à ce code.

16. Si l'avocat chargé de la présentation ou l'intime en fait la demande à un moment quelconque, le Comité peut exiger que quelconque, par assignation, fasse un témoignage sous serment ou une déclaration lors de l'audience et présente, à titre d'éléments de preuve, tout document ou objet, que le Comité précise, qui est en rapport avec la question faisant l'objet de l'audience et admissible à l'audience.

- (1) Toute assignation ordonnée aux termes du présent article doit être présentée sous la forme prescrite dans le paragraphe 12(2) de la Loi sur l'exercice des compétences légales.

17. L'audience est tenue devant un comité composé de membres du Conseil qui n'ont pas participé au sous-comité des plaintes chargé d'enquêter sur la plainte ni au comité d'examen qui a examiné le report du sous-comité des plaintes.

- (1) Les directives suivantes s'appliquent à la conduite de l'audience à moins que le Comité, sur motion présentée par une autre partie ou par consentement, n'en décide autrement.

- (a) Tous les témoignages doivent être faits sous serment, affirmation solennelle ou promesse.
- (b) L'avocat chargé de la présentation doit ouvrir l'audience par une déclaration préliminaire et poursuivre en présentant les éléments de preuve à l'appui des accusations contenues dans l'avis d'audience, par interrogation directe des témoins.

- (c) L'avocat représentant l'intime peut faire une déclaration préliminaire immédiatement après la déclaration préliminaire de l'avocat chargé de la

- présentation ou après la présentation des éléments de preuve de celui-ci. L'intime peut ensuite présenter ses propres éléments de preuve.
- (d) Tous les témoins peuvent être contre-interrogés par l'avocat de la partie adverse puis être interrogés à nouveau au besoin.
- (e) L'audience doit faire l'objet d'un compte-rendu sténographique et une transcription doit en être fournie sur demande. Si l'avocat de l'intime en fait la demande, on doit lui fournir la transcription de l'audience gratuitement et dans un délai raisonnable.
- (f) Tant l'avocat chargé de la présentation que l'intime peuvent présenter et proposer au comité d'audience des constatations, des conclusions, des recommandations ou des ébauches de décisions.
- (g) En conclusion de l'audience, l'avocat chargé de la présentation et l'intime font, dans l'ordre déterminé par le Conseil, une déclaration faisant la synthèse des éléments de preuve et de toute question de droit soulevée par ces éléments.

DÉCISIONS PRÉALABLES À L'AUDIENCE

18. Au plus tard 10 jours avant la date fixée pour le début de l'audience, l'une ou l'autre des parties peut présenter au comité d'audience une requête concernant une question de procédure ou autre qui doit faire l'objet d'une décision avant l'audience.
- (1) Sans limiter la portée générale de ce qui précède, ces requêtes peuvent porter sur les points suivants :

- (a) objection quant à la compétence du Conseil d'instruire la plainte;
- (b) résolution de toute question relative à des craintes raisonnables de partialité personnelle ou institutionnelle de la part du Comité;
- (c) objection quant à la suffisance de divulgation de la part l'avocat chargé de la présentation;
- (d) décision sur une question de droit quelconque afin d'accélérer le déroulement de l'audience;

Une preuve de la signification doit être conservée dans les dossiers du Conseil.

RÉPONSE

9. L'intimé peut signifier à l'avocat chargé de la présentation et déposer auprès du Conseil une réplique aux accusations rapportées dans l'avis d'audience.

- (1) La réponse peut contenir tous les détails des faits sur lesquels l'intimé s'appuie.

- (2) Le répondant peut en tout temps, avant ou durant l'audience, signifier à l'avocat chargé de la présentation et auprès du Conseil une réplique modifiée.

- (3) Le fait que l'intimé ne dépose aucune réplique ne doit pas être considéré comme son admission d'une accusation quelconque portée contre lui à son encontre.

DIVULGATION

10. Avant l'audience, l'avocat chargé de la présentation doit faire parvenir à l'intimé ou à son avocat les nom et adresse de tous les témoins que l'on sait au courant des faits pertinents ainsi qu'une copie de toutes les déclarations faites par le témoin et des résumés des entrevues avec le témoin avant l'audience.

11. L'avocat chargé de la présentation doit aussi fournir, avant l'audience, tous les documents non privilégiés en sa possession se rapportant aux accusations mentionnées dans l'avis d'audience.

12. Le Comité d'audience peut interdire à l'avocat chargé de la présentation d'appeler à l'audience un témoin dont le nom et l'adresse, s'ils sont connus, ou les déclarations ou le résumé des entrevues, n'auraient pas été communiqués à l'intimé avant l'audience.

13. La partie V s'applique, avec les adaptations nécessaires, à tout renseignement porté à l'attention de l'avocat chargé de la présentation après qu'il ait communiqué l'information conformément à cette partie.

la présentation de l'exposé des faits à l'encontre de l'intimé.

3. L'avocat-conseil engagé par le Conseil agit indépendamment de celui-ci.

4. Le mandat de l'avocat-conseil engagé dans ce contexte n'est pas d'essayer d'obtenir une décision particulière à l'encontre d'un intimé, mais de veiller à ce que la plainte portée contre le juge soit évaluée de façon rationnelle et objective afin de parvenir à une décision juste.

5. Pour plus de certitude, l'avocat chargé de la présentation ne doit conseiller le Conseil sur aucune des questions qui sont soumises à celui-ci. Toutes les communications entre l'avocat chargé de la présentation et le Conseil doivent, dans le cas de communications directes, se faire en présence de l'avocat représentant l'intimé ou, dans le cas de communications écrites, avec copie aux intimés.

6. L'audience doit être précédée d'un avis d'audience conformément à cette section.

7. L'avocat chargé de la présentation doit rédiger un avis d'audience.

- (1) L'avis d'audience doit contenir les éléments suivants :

- (a) détails des accusations portées à l'encontre de l'intimé;

- (b) référence à la loi en vertu de laquelle l'audience sera tenue;

- (c) déclaration indiquant la date, l'heure et le lieu de l'audience;

- (d) déclaration indiquant l'objet de l'audience;

- (e) déclaration précisant que si l'intimé n'est pas présent à l'audience, le Comité peut tenir l'audience en son absence et l'intimé n'aura droit à aucun autre avis de l'instance.

8. L'avocat chargé de la présentation doit prendre les dispositions nécessaires pour que l'avis d'audience soit signifié en personne à l'intimé ou, si le comité chargé de l'audience adopte une motion à cet effet, par un autre moyen qu'une signification à personne.

CODE DE PROCÉDURE POUR LES AUDIENCES

pour que le dossier soit traité comme s'il s'agit d'une nouvelle plainte. Le sous-comité des plaintes doit être composé de membres du Conseil de la magistrature qui ne font pas partie du comité d'audience de la plainte.

PRÉAMBULE

Ces règles de procédure s'appliquent à toutes les audiences du Conseil de la magistrature organisées en vertu de l'article 51.6 de la Loi sur les tribunaux judiciaires et sont élaborées et rendues publiques en vertu de la disposition 51.1 (1) 6 de la Loi sur les tribunaux judiciaires.

Ces règles de procédure doivent être interprétées libéralement afin d'assurer que chaque audience donne lieu à une décision juste et basée sur les mérites de la cause.

DÉFINITIONS

1. À moins que le contexte n'en indique autrement, les termes utilisés dans ce code ont la signification qui leur est donnée dans la Loi sur les tribunaux judiciaires.

(1) Dans ce code,

(a) La « Loi » est la Loi sur les tribunaux judiciaires, L.R.O. 1990, chap. C. 43, telle que modifiée.

(b) Le « comité » est le comité chargé de l'audience, créé en vertu du paragraphe 49 (16) de la Loi.

(c) « L'intime » est le juge à l'encontre de qui il est ordonné de tenir une audience en vertu de l'alinéa 51.4 (18)(a) de la Loi.

(d) « L'avocat chargé de la présentation » est l'avocat chargé par le Conseil de la préparation et de la présentation de l'exposé des faits à l'encontre d'un intime.

PRÉSENTATION DES PLAINTES

2. Lorsqu'il ordonne de tenir une audience concernant une plainte portée contre un juge, le Conseil engage un avocat-conseil pour la préparation et

Les membres du Conseil de la magistrature examinent les critères suivants avant de décider s'il est approprié de révéler publiquement le nom d'un juge même si l'audience s'est tenue à huis clos:

a) le juge en fait la demande;

b) il y va de l'intérêt public.

ORDONNANCE INTERDISANT LA PUBLICATION DU NOM D'UN JUGE, EN ATTENDANT UNE DÉCISION CONCERNANT UNE PLAINTE – CRITÈRES

Dans des circonstances exceptionnelles et conformément aux critères établis aux termes du paragraphe 51.1(1), le Conseil de la magistrature peut rendre une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte.

par. 51.6 (10)

Les membres du Conseil de la magistrature examinent les critères suivants pour déterminer quand le Conseil de la magistrature peut rendre une ordonnance interdisant, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte, en attendant une décision concernant une plainte :

a) des questions intéressant la sécurité publique pourraient être révélées;

b) des questions financières ou personnelles de nature intime ou d'autres questions qui pourraient être révélées à l'audience, qui sont telles qu'en égard aux circonstances, l'avantage qu'il y a à ne pas les révéler dans l'intérêt de la personne concernée ou dans l'intérêt public l'emporte sur le principe de la publicité des audiences.

NOUVELLE PLAINTE

Si, au cours de l'audience, de nouveaux faits sont divulgués qui, s'ils étaient portés à la connaissance d'un membre du Conseil de la magistrature, pourraient constituer une allégation de mauvaise conduite d'un juge provincial qui n'est pas couverte par la plainte faisant l'objet de l'audience, le registraire rédige un résumé des détails de la plainte et l'envoie à un sous-comité des plaintes du Conseil de la magistrature

AUDIENCES

COMMUNICATION PAR LES MEMBRES

Les membres du Conseil de la magistrature qui participent à l'audience ne doivent pas communiquer ni directement ni indirectement avec une partie, un avocat, un mandataire ou une autre personne, pour ce qui est de l'objet de l'audience, sauf si toutes les parties et leurs avocats ou mandataires ont été avisés et ont l'occasion de participer. Cette interdiction n'a pas pour effet d'empêcher le Conseil de la magistrature d'engager un avocat pour se faire aider, auquel cas la nature des conseils donnés par l'avocat est communiquée aux parties pour leur permettre de présenter des observations quant au droit applicable.

par. 51.6 (4) et (5)

PARTIES À L'AUDIENCE

Le Conseil de la magistrature détermine quelles sont les parties à l'audience.

par. 51.6 (6)

TOTALITÉ OU PARTIE DE L'AUDIENCE À HUIS CLOS

Les audiences du Conseil de la magistrature sur une plainte et ses réunions portant sur l'examen de la question de l'indemnisation sont ouvertes au public, à moins que le comité d'audience ne détermine, conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1), qu'il existe des circonstances exceptionnelles et que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique, auquel cas il peut tenir la totalité ou une partie de l'audience à huis clos.

par. 49 (11) et 51.6 (7)

La Loi sur l'exercice des compétences légales (L.E.C.L.) s'applique à une audience tenue par le Conseil de la magistrature, sous réserve des dispositions relatives aux décisions rendues sans audience (art. 4 de la L.E.C.L.) ou aux audiences publiques (par. 9[1] de la L.E.C.L.).

par. 51.6 (2)

Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

par. 51.6 (8)

Les membres du Conseil de la magistrature se fondent sur les critères suivants pour déterminer quelles circonstances exceptionnelles peuvent justifier la décision de préserver le maintien du caractère confidentiel et de tenir la totalité ou une partie de l'audience à huis clos :

- a) des questions intéressant la sécurité publique pourraient être révélées;
- b) des questions financières ou personnelles de nature intime ou d'autres questions qui pourraient être révélées à l'audience, qui sont telles qu'en égard aux circonstances, l'avantage qu'il y a à ne pas les révéler dans l'intérêt de la personne concernée ou dans l'intérêt public l'emporte sur le principe de la publicité des audiences.

par. 51.6 (7)

Le Conseil de la magistrature a établi les critères suivants aux termes du paragraphe 51.1 (1) pour l'aider à déterminer si les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique. Si le Conseil de la magistrature détermine qu'il existe des circonstances exceptionnelles, conformément aux critères suivants, il peut tenir la totalité ou une partie de l'audience à huis clos.

AUDIENCE PUBLIQUE OU À HUIS CLOS – CRITÈRES

par. 51.6 (9)

Si la plainte porte sur une allégation d'inconduite d'ordre sexuel ou de harcèlement sexuel, le Conseil de la magistrature interdit, à la demande d'un plaignant ou d'un autre témoin qui déclare avoir été victime d'une conduite semblable par le juge, la publication de renseignements qui pourraient identifier le plaignant ou le témoin, selon le cas.

COMPOSITION

Les règles suivantes s'appliquent à un comité d'audience établi en vue de la tenue d'une audience aux termes de l'article 51.6 (décision du Conseil de la magistrature) ou de l'article 51.7 (indemnisation) :

- 1) la moitié des membres du comité d'audience, y compris le président, doivent être des juges et la moitié ne doivent pas être des juges;
- 2) un membre, au moins, ne doit être ni juge ni avocat;
- 3) le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel de l'Ontario désigné par le juge en chef, préside le comité d'audience;
- 4) sous réserve des dispositions 1, 2 et 3 ci-dessus, le Conseil de la magistrature peut fixer le nombre des membres du comité d'audience et en déterminer la composition;
- 5) tous les membres du comité d'audience constituent le quorum (par. 49[17]);
- 6) le président du comité d'audience a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau;
- 7) les membres du sous-comité des plaintes qui a enquête sur une plainte ne doivent pas participer à une audience sur celle-ci;
- 8) les membres du comité d'examen qui a reçu et examine la recommandation d'un sous-comité des plaintes à l'égard d'une plainte ne doivent pas participer à une audience sur celle-ci (par. 49[20]).

par. 49 (17), (18), (19) et (20)

POUVOIRS

Un comité d'audience formé par le Conseil de la magistrature aux termes des articles 51.6 ou 51.7 a, à cette fin, les mêmes pouvoirs que le Conseil de la magistrature.

par. 49 (16)

- (3) l'intérêt public requiert la tenue d'une audience sur la plainte.

Avis de décision

COMMUNICATION DE LA DÉCISION

Le Conseil de la magistrature, ou un comité d'examen de celui-ci, communique sa décision au plaignant et au juge qui fait l'objet de la plainte, en exposant brièvement les motifs dans le cas d'un rejet.

par. 51.4 (20)

PROCÉDURES ADMINISTRATIVES

On trouvera à la page 25-26 du présent document des renseignements détaillés sur les procédures administratives que doit suivre le Conseil de la magistrature au moment d'aviser les parties de sa décision.

COMITÉ D'AUDIENCE

LÉGISLATION APPLICABLE

Toutes les audiences tenues par le Conseil de la magistrature doivent se dérouler conformément à l'article 51.6 de la Loi sur les tribunaux judiciaires.

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

La Loi sur l'exercice des compétences légales (L.E.C.L.) s'applique à toute audience tenue par le Conseil de la magistrature, sous réserve des dispositions relatives aux décisions rendues sans audience (art. 4 de la L.E.C.L.) ou aux audiences publiques (par. 9 [1] de la L.E.C.L.). Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

par. 51.1 (3) et 51.6 (2)

Les règles que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1) s'appliquent à une audience tenue par celui-ci.

par. 51.6 (3)

C) RENVOI DE LA PLAINTÉ AU JUGE EN CHEF

Le comité d'examen renvoie la plainte au juge en chef de la Cour de justice de l'Ontario si la majorité de ses membres estime que le comportement reproché ne justifie pas une autre décision, qu'il y a lieu de croire que la plainte pourrait être fondée et que la décision représentée, de l'avis de la majorité des membres du comité d'examen, un moyen convenable d'informer le juge que sa conduite n'a pas été appropriée dans les circonstances ayant donné lieu à la plainte. Le comité d'examen recommande d'assortir de conditions le renvoi de la plainte au juge en chef de la Cour de justice de l'Ontario si la majorité de ses membres convient qu'il existe une démarche ou une formation complémentaire dont le juge qui fait l'objet de la plainte pourrait bénéficier et si ce dernier y consent, conformément au paragraphe 51.4 (15). Le juge en chef de la Cour de justice de l'Ontario présente par écrit au comité d'examen et au sous-comité des plaintes un rapport sur la décision concernant la plainte.

D) RENVOI DE LA PLAINTÉ À UN MÉDIATEUR

Le comité d'examen renvoie la plainte à un médiateur si le Conseil de la magistrature a établi une procédure de médiation pour les plaigants et les juges qui font l'objet de plaintes, conformément à l'article 51.5 de la Loi sur les tribunaux judiciaires. Lorsque le Conseil de la magistrature établit une procédure de médiation, la plainte peut être renvoyée à un médiateur si la majorité des membres du comité d'examen estime que la conduite reprochée ne répond pas aux critères d'exclusion des plaintes qui ne se prêtent pas à la médiation, comme le prévoit le paragraphe 51.5(3) de la Loi sur les tribunaux judiciaires. Jusqu'à ce que le Conseil de la magistrature établisse ces critères, les plaintes sont exclues de la procédure de médiation dans l'une quelconque des circonstances suivantes :

- (1) il existe un déséquilibre important du pouvoir entre le plaignant et le juge, ou il existe un écart si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable;
- (2) la plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motif illicite prévu dans une disposition du Code des droits de la personne;

La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, liés à l'examen du rapport du sous-comité des plaintes ou à l'examen d'une plainte qui lui a été renvoyée par le sous-comité.

par. 51.4 (19)

par. 51.1 (3)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

par. 51.4 (22)

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'examen des plaintes qui lui sont renvoyées par un sous-comité des plaintes, à sa propre demande ou non, et le Conseil de la magistrature, ou un comité d'examen de celui-ci, se conforme aux directives et aux règles de procédure établies à cette fin par le Conseil.

DIRECTIVES CONCERNANT LA DÉCISION A) TENUE D'UNE AUDIENCE

Le comité d'examen ordonne la tenue d'une audience si la majorité de ses membres estime qu'il y a eu une allégation d'inconduite judiciaire qui repose sur des faits et qui, si l'enquêteur la considère digne de foi, pourrait amener à conclure à l'inconduite judiciaire. Si le comité d'examen recommande de tenir une audience, il peut recommander ou non que celle-ci se tienne à huis clos et, le cas échéant, les critères établis par le Conseil de la magistrature devront être respectés (voir la page 18 ci-après).

B) REJET DE LA PLAINTÉ

Le comité d'examen rejette la plainte si la majorité de ses membres estime que l'allégation d'inconduite judiciaire ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure, ou si le comité d'examen est d'avis que la plainte n'est pas justifiée. En général, un comité d'examen ne rejettera pas une plainte sur la base qu'elle n'est pas justifiée à moins d'être convaincu que les allégations contre le juge provincial ne s'appuient sur aucun fait réel.

Examen du rapport du sous-comité des plaintes

EXAMEN À HUIS CLOS

Le comité d'examen examine le rapport du sous-comité des plaintes, à huis clos, et peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte, auquel cas le comité examine la plainte, à huis clos.

par. 51.4 (17)

PROCÉDURE D'EXAMEN

Le comité d'examen examine la lettre de plainte, les passages pertinents de la transcription (s'il y a lieu), la réponse du juge (s'il y a lieu), etc., dont tous les renseignements identificatoires doivent avoir été supprimés, ainsi que le rapport du sous-comité des plaintes, jusqu'à ce que ses membres soient convaincus que le sous-comité a repéré et examiné les sujets de préoccupation dans son enquête portant sur la plainte et dans la ou les recommandations qu'il a formulées au comité d'examen relativement à la décision concernant la plainte.

Le comité d'examen peut différer sa décision sur la recommandation du sous-comité des plaintes et ajourner ses travaux au besoin afin d'examiner sa décision ou ordonner au sous-comité de poursuivre son enquête et de lui présenter un nouveau rapport. Si les membres du comité d'examen ne sont pas satisfaits du rapport du sous-comité des plaintes, ils peuvent renvoyer la plainte de nouveau au sous-comité pour que celui-ci poursuive son enquête, donner toute autre orientation ou faire au sous-comité toute autre demande qu'ils jugent appropriée. Lorsqu'il est nécessaire de procéder à un vote pour déterminer s'il convient d'accepter ou non la recommandation d'un sous-comité des plaintes, et qu'il y a partage des voix, le président vote de nouveau et il a voix prépondérante.

Renvoi d'une plainte à un comité d'examen

QUAND PROCÉDER AU RENVOI

Lorsque le sous-comité des plaintes présente son rapport au comité d'examen, le comité peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte afin qu'il l'examine lui-même. Le comité d'examen exige que le sous-comité des plaintes lui renvoie la plainte si les membres du sous-comité ne peuvent s'entendre sur la décision à recommander concernant la plainte ou si la décision recommandée à cet égard est inacceptable pour la majorité des membres du comité d'examen.

par. 51.4 (13), (14) et (17)

POUVOIR D'UN COMITÉ D'EXAMEN À L'ÉGARD DU RENVOI

Si le sous-comité des plaintes renvoie une plainte au comité d'examen ou si le comité exige que le sous-comité lui renvoie une plainte pour qu'il l'examine lui-même, l'identité du plaignant et celle du juge qui fait l'objet de la plainte peuvent être révélées aux membres du comité d'examen qui examinent la plainte, à huis clos, et qui peuvent, selon le cas :

- tenir une audience;
- rejeter la plainte;
- renvoyer la plainte au juge en chef de la Cour de justice de l'Ontario en assortissant ou non le renvoi de conditions;
- renvoyer la plainte à un médiateur.

par. 51.4 (16) et (18)

DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

RÔLE DU COMITÉ D'EXAMEN

Le comité d'examen est formé pour examiner les décisions des sous-comités des plaintes concernant les plaintes et prendre une décision concernant les dossiers de plainte actifs à toutes les réunions ordinaires du Conseil de la magistrature, si les exigences de la loi pertinente relatives au quorum sont respectées.

DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, liées à l'examen d'une plainte qui lui est renvoyée par un sous-comité des plaintes.

par. 51.4 (19)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

par. 51.1 (3)

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'examen du rapport présenté par un sous-comité des plaintes à un comité d'examen ou d'une plainte qui lui est renvoyée par un sous-comité des plaintes, et le Conseil de la magistrature, ou un comité d'examen de celui-ci, se conforme aux directives et aux règles de procédure établies à cette fin par le Conseil.

par. 51.4 (22)

INFORMATION À INCLURE

Lorsqu'il renvoie la plainte à un comité d'examen du Conseil, le sous-comité des plaintes doit transmettre au comité d'examen tous les documents, transcriptions, déclarations et autres éléments de preuve dont il a tenu compte au cours de l'enquête sur la plainte, y compris, le cas échéant, la réaction à la plainte du juge concerné. Le comité d'examen tient compte de ces renseignements pour parvenir à une conclusion sur la décision appropriée concernant la plainte.

COMITÉ D'EXAMEN

OBJET

Le Conseil de la magistrature peut former un comité d'examen dans l'un des buts suivants :

- examiner le rapport d'un sous-comité des plaintes;
- examiner une plainte qui lui a été renvoyée par un sous-comité des plaintes;
- examiner le rapport d'un médiateur
- examiner une plainte qui lui est renvoyée à l'issue d'une médiation;
- examiner la question de l'indemnisation;

et, à cette fin, le comité d'examen a les mêmes pouvoirs que le Conseil de la magistrature.

par. 49 (14)

COMPOSITION

Le comité d'examen se compose de deux juges provinciaux (autres que le juge en chef, d'un avocat et d'un membre du Conseil de la magistrature qui n'est ni juge ni avocat. Aucun des deux membres ayant siégé au sous-comité des plaintes qui a mené l'enquête sur la plainte et formulé la recommandation au comité d'examen ne peut en faire partie. Un des juges, désigné par le Conseil, préside le comité et quatre membres constituent le quorum. Le président du comité d'examen a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

par. 49 (15), (18) et (19)

C) RENVOI DE LA PLAINTÉ À UN MÉDIATEUR

Le sous-comité des plaintes renvoie la plainte à un médiateur si le Conseil de la magistrature a établi une procédure de médiation pour les plaignants et pour les juges qui font l'objet de plaintes, conformément à l'article 51.5 de la Loi sur les tribunaux judiciaires. Lorsque le Conseil de la magistrature établit une procédure de médiation, la plainte peut être renvoyée à un médiateur si les deux membres estiment que la conduite reprochée ne répond pas aux critères d'exclusion des plaintes qui ne se prêtent pas à la médiation, comme le prévoit la Loi sur les tribunaux judiciaires. Jusqu'à ce que le Conseil de la magistrature établisse ces critères, les plaintes sont exclues du processus de médiation dans les circonstances suivantes :

(1) il existe un déséquilibre important du pouvoir entre le plaignant et le juge, ou il existe un écart si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable;

(2) la plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motif illicite prévu dans une disposition du Code des droits de la personne;

(3) l'intérêt public requiert la tenue d'une audience sur la plainte.

par. 51.4 (13) et 51.5

D) RECOMMANDATION DE TENIR UNE AUDIENCE

Le sous-comité des plaintes renvoie la plainte au Conseil de la magistrature, ou à un comité d'examen de celui-ci, et il recommande la tenue d'une audience sur la plainte si elle porte sur une allégation d'inconduite judiciaire qui, de l'avis du sous-comité des plaintes, repose sur des faits et qui, si l'enquêteur la considère digne de foi, pourrait amener à conclure qu'il y a eu inconduite judiciaire.

par. 51.4 (13) et (16)

RECOMMANDATION RELATIVE À

LA TENUE D'UNE AUDIENCE

Si le sous-comité des plaintes recommande de tenir une audience, il peut recommander ou non que celle-ci se tienne à huis clos et, le cas échéant, on se conforme aux critères établis par le Conseil de la magistrature (voir la page 11 ci-après).

E) INDEMNITÉ

Le rapport du sous-comité des plaintes au comité d'examen peut aussi traiter de la question de l'indemnisation du juge pour les frais pour services juridiques qu'il a engagés, le cas échéant, relativement à l'enquête si le sous-comité estime que la plainte doit être rejetée et qu'il a formulé une recommandation en ce sens dans son rapport au Conseil de la magistrature. Le Conseil peut alors recommander au procureur général que le juge soit indemnisé pour les frais pour services juridiques, conformément à l'article 51.7 de la Loi.

par. 51.7 (1)

La décision de recommander ou non que le juge soit indemnisé pour les frais pour services juridiques sera prise au cas par cas.

RENGOI D'UNE PLAINTÉ AU CONSEIL

Comme il a été signalé ci-dessus, le sous-comité des plaintes peut également renvoyer la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience sur la plainte. Il n'est pas nécessaire que les deux membres du sous-comité des plaintes conviennent de cette recommandation, et le Conseil de la magistrature, ou un comité d'examen de celui-ci, peut exiger du sous-comité des plaintes qu'il lui renvoie la plainte s'il n'approuve pas la décision recommandée par le sous-comité ou si les membres du sous-comité ne s'entendent pas sur la décision. Si le sous-comité renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience, l'identité du plaignant et celle du juge en cause peuvent être révélées au Conseil de la magistrature, ou à un comité d'examen de celui-ci.

par. 51.4 (16) et (17)

DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

par. 51.1 (3)

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1 (1) relativement à la prise d'une décision concernant une plainte et à la communication au Conseil de la magistrature, ou à un comité d'examen de celui-ci, de la décision du sous-comité des plaintes.

par. 51.4 (21)

PROCÉDURE À SUIVRE

Un membre de chaque sous-comité des plaintes est chargé de communiquer avec le registraire adjoint avant une date précise précédant chaque réunion ordinaire du Conseil de la magistrature pour l'informer, s'il y a lieu, des dossiers attribués au sous-comité sur lesquels ce dernier est prêt à présenter un rapport à un comité d'examen. Le sous-comité des plaintes fournit aussi une copie lisible et remplie en bonne et due forme des pages appropriées de la formule d'admission de la plainte pour chaque dossier sur lequel ils sont prêts à présenter un rapport et indiquent les autres pièces du dossier qui, outre la plainte, doivent être copiées et transmises aux membres du comité d'examen pour qu'il les examine.

Au moins un membre du sous-comité des plaintes est présent lorsque le rapport du sous-comité est présenté au comité d'examen.

AUCUN RENSEIGNEMENT IDENTIFICATOIRE

Le sous-comité des plaintes présente au Conseil de la magistrature un rapport sur sa décision concernant toute plainte qui est rejetée ou renvoyée au juge en chef de la Cour de justice de l'Ontario ou à un médiateur,

par. 51.4 (16)

DÉCISION UNANIME

Le sous-comité des plaintes ne peut rejeter la plainte ou la renvoyer au juge en chef de la Cour de justice de l'Ontario ou à un médiateur que si les deux membres du sous-comité en conviennent, sinon la plainte doit être renvoyée au Conseil de la magistrature.

par. 51.4 (14)

CRITÈRES POUR LES DÉCISIONS RENDUES PAR LE SOUS-COMITÉ DES PLAINTES

A) REJET DE LA PLAINTÉ

Lorsqu'il l'a examinée, le sous-comité des plaintes rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure. Lorsqu'il a terminé son enquête, le sous-comité peut aussi recommander le rejet d'une plainte s'il en arrive à la conclusion que la plainte n'est pas fondée.

par. 51.4 (3) et (13)

B) RENVOI DE LA PLAINTÉ AU JUGE EN CHEF

Le sous-comité des plaintes renvoie la plainte au juge en chef de la Cour de justice de l'Ontario si les circonstances entourant l'incidence reprochée ne justifient pas une autre décision, qu'il y a lieu de croire que la plainte pourrait être fondée et que la décision constitue, de l'avis du sous-comité des plaintes, un moyen convenable d'informer le juge que sa conduite n'a pas été appropriée dans les circonstances ayant donné lieu à la plainte. Le sous-comité des plaintes assortira de conditions la décision de renvoyer la plainte au juge en chef de la Cour de justice de l'Ontario si, à son avis, il existe une démarche ou une formation complètementaire dont le juge faisant l'objet de la plainte pourrait bénéficier et si ce dernier y consent.

par. 51.4 (13) et (15)

INFORMATION CONCERNANT LES RECOMMANDATIONS PROVISOIRES

Lorsque le sous-comité des plaintes recommande la suspension ou la réaffectation temporaire du juge jusqu'au règlement de la plainte, les détails des facteurs sur lesquels repose la recommandation du sous-comité doivent être fournis en même temps au juge principal régional et au juge qui fait l'objet de la plainte dans le but d'aider le juge principal régional à prendre sa décision et d'aviser le juge de la plainte dont il fait l'objet et de la recommandation du sous-comité. Lorsque le sous-comité des plaintes ou le comité d'examen propose de recommander la suspension temporaire ou la réaffectation du juge, il peut donner à celui-ci la possibilité de faire valoir son point de vue par écrit en avisant le juge, par signification à personne ou, si ce n'est pas possible, par courrier recommandé, de la suspension ou de la réaffectation proposée et des motifs justifiant cette proposition, et en informant de son droit de réponse. Si aucune réponse du juge n'est parvenue dans les 10 jours suivant la date de l'envoi de la lettre, la recommandation de suspension temporaire ou de réaffectation se poursuit.

Rapport au comité d'examen LORSQUE L'ENQUÊTE EST TERMINÉE

Lorsqu'il a terminé son enquête, le sous-comité des plaintes, selon le cas :

- rejette la plainte;
- renvoie la plainte au juge en chef de la Cour de justice de l'Ontario;
- renvoie la plainte à un médiateur, conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1);
- renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience.

par. 51.4 (13)

PLAINTES CONTRE LE JUGE EN CHEF ET CERTAINS AUTRES JUGES – RECOMMANDATIONS PROVISOIRES

Si la plainte est portée contre le juge en chef de la Cour de justice de l'Ontario, un juge en chef adjoint régional qui est membre du Conseil de la magistrature, toute recommandation de suspension, avec rémunération, ou de réaffectation temporaire est présentée au juge en chef de la Cour supérieure de justice, qui peut suspendre ou réaffecter le juge selon la recommandation du sous-comité des plaintes.

par. 51.4 (12)

CRITÈRES POUR LES RECOMMANDATIONS PROVISOIRES DE SUSPENSION OU DE RÉAFFECTATION

Lorsqu'il recommande au juge principal régional compétent de suspendre ou de réaffecter temporairement un juge jusqu'au règlement de la plainte, le sous-comité des plaintes se conforme aux directives et règles de procédure établies par le Conseil de la magistrature aux termes du paragraphe 51.1 (1), c'est-à-dire :

- la plainte découle de relations de travail entre le plaignant et le juge, et le plaignant et le juge travaillent au même palais de justice;
- le fait de permettre au juge de continuer à siéger est susceptible de jeter le discrédit sur l'administration de la justice;
- la plainte est assez grave pour qu'il y ait des motifs raisonnables de faire mener une enquête par un organisme chargé de l'exécution de la loi;
- il est évident de l'avis du sous-comité des plaintes que le juge a subi une diminution de ses capacités mentales ou physiques à laquelle il est impossible de remédier ou dont il est impossible de tenir compte raisonnablement.

par. 51.4 (21)

RÉPONSE À UNE PLAINTÉ

Si le sous-comité des plaintes souhaite obtenir une réponse du juge, il donne au registraire l'instruction de demander au juge de réagir sur une ou plusieurs questions précises soulevées dans la plainte. Une copie de la plainte, la transcription (s'il y a lieu) et toutes les pièces pertinentes versées au dossier sont transmises au juge avec la lettre sollicitant sa réponse. Le juge dispose de trente jours à partir de la date de la lettre sollicitant sa réponse pour répondre à la plainte. Si aucune réponse n'est reçue avant l'expiration du délai prescrit, les membres du sous-comité des plaintes en sont informés et une lettre de rappel est achevinée au juge par courrier recommandé. Si l'on ne reçoit toujours pas de réponse dans les dix jours suivant la date de la lettre recommandée et que le sous-comité est convaincu que le juge est au courant de la plainte et de tous les détails s'y rapportant, le sous-comité procédera en l'absence de réponse. Toute réponse à une plainte formulée par le juge qui fait l'objet de la plainte à cette étape de la procédure est réputée avoir été donnée sous réserve de tout droit et elle ne pourra pas être utilisée au cours d'une audience.

GÉNÉRALITÉS

La transcription de témoignages et la réponse du juge à la plainte sont transmises par message aux membres du sous-comité des plaintes, à moins que le membres ne donnent des instructions contraires.

Le sous-comité des plaintes peut inviter l'une ou l'autre partie ou l'un ou l'autre témoin, s'il y en a, à le rencontrer ou communiquer avec eux à l'étape de l'enquête. Le secrétaire du Conseil de magistrature transcrit les lettres de plainte qui sont manuscrites et offre aux membres du sous-comité des plaintes les services de secrétariat et de soutien nécessaires.

CONSEILS ET ASSISTANCE

Le sous-comité des plaintes peut donner au registraire l'instruction d'engager des personnes, y compris des avocats, ou de retenir leurs services pour l'aider dans la conduite de son enquête sur une plainte. Le sous-comité des plaintes peut aussi consulter les membres du sous-comité des procédures pour obtenir leur

PLAINTES MULTIPLES

par. 51.4 (5)

apport et leurs conseils au cours de l'enquête menée dans le cadre du traitement de la plainte.

Le registraire remettra toute nouvelle plainte de *nature similaire*, formée contre un juge à l'égard duquel un ou des dossiers de plainte est (sont) déjà ouvert(s), au même sous-comité des plaintes qui mène une enquête sur le ou les dossiers en instance. Une telle mesure garantit que les membres du sous-comité des plaintes qui mènent une enquête sur une plainte portée contre un juge soient au courant de l'existence d'une plainte similaire, quelle soit du même plaignant ou d'un autre, formulée contre le même juge.

Lorsqu'un juge fait l'objet de trois plaintes portées par trois plaignants différents sur une période de trois ans, le registraire porte ce fait à l'attention du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, afin qu'il détermine si les plaintes multiples doivent ou non faire l'objet de conseils au juge de part du Conseil, du juge en chef adjoint ou du juge principal régional membre du Conseil de la magistrature.

RECOMMANDATION PROVISOIRE DE SUSPENSION OU DE RÉAFFECTATION

Le sous-comité des plaintes peut recommander au juge principal régional compétent la suspension, avec rémunération, du juge qui fait l'objet de la plainte ou l'affectation de celui-ci à un autre endroit, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise. La recommandation est présentée au juge principal régional nommé pour la région à laquelle le juge est affecté, sauf si le juge principal régional est membre du Conseil de la magistrature, auquel cas la recommandation est présentée à un autre juge principal régional. Le juge principal régional peut suspendre ou réaffecter temporairement le juge selon la recommandation du sous-comité. Le pouvoir discrétionnaire qu'a le juge principal régional d'accepter ou de rejeter la recommandation du sous-comité n'est pas assujéti à l'administration ni à la surveillance de la part du juge en chef.

par. 51.4 (8), (9), (10) et (11)

PLAINTES ANTÉRIEURES

Le sous-comité des plaintes limite son enquête à la plainte portée devant lui. La question de l'importance à accorder, s'il y a lieu, aux plaintes antérieures portées contre un juge qui fait l'objet d'une autre plainte devant le Conseil de la magistrature peut être examinée par les membres du sous-comité des plaintes si le registraire, avec l'aide d'un avocat (si le registraire l'estime nécessaire), détermine d'abord que la ou les plaintes antérieures sont très semblables en ce sens qu'il y a preuve de faits similaires et qu'elles l'aideraient à déterminer si la plainte examinée pourrait ou non être fondée.

INFORMATION QUE LE REGISTRATEUR DOIT OBTENIR

Les membres du sous-comité des plaintes s'efforcent d'examiner les dossiers qui leur ont été attribués, d'en discuter et de déterminer dans un délai d'un mois après la réception d'un dossier si une transcription de témoignages ou une réponse à la plainte est nécessaire. Si le sous-comité des plaintes lui en fait la demande, le registraire doit obtenir pour celui-ci toutes les pièces (transcriptions, bandes audio, dossiers du tribunal, etc.) que le sous-comité souhaite examiner en rapport avec une plainte; les membres du sous-comité n'obtiennent pas eux-mêmes ces pièces.

TRANSCRIPTIONS, ETC.

Compte tenu de la nature de la plainte, le sous-comité peut donner au registraire l'instruction de demander la transcription de témoignages ou leur enregistrement sur bande magnétique dans le cadre de son enquête. Au besoin, on communique avec le plaignant pour déterminer l'étape à laquelle en est la poursuite en justice avant de demander une transcription. Le sous-comité des plaintes peut donner au registraire l'instruction de laisser le dossier en suspens jusqu'à ce que l'affaire portée devant les tribunaux ait été réglée. Si le sous-comité réclame une transcription, les sténographes judiciaires ont comme consigne de ne pas présenter la transcription au juge qui fait l'objet de la plainte pour révision.

ACCORD SUR LA FAÇON DE PROCÉDER

par. 51.4 (21)

décision de renvoyer la plainte au juge en chef, le sous-comité des plaintes se conforme aux directives et aux règles de procédure établies par le Conseil de la magistrature aux termes du paragraphe 51.5 (1). Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'enquête menée sur une plainte par un sous-comité des plaintes.

Les membres du sous-comité des plaintes examinent le dossier et les pièces (le cas échéant) et en discutent ensemble avant de déterminer la teneur de la plainte et de décider des mesures d'enquête à prendre (demander une transcription, solliciter une réponse, etc.). Aucun membre du sous-comité ne doit prendre quelque mesure d'enquête que ce soit à l'égard d'une plainte lui ayant été attribuée sans d'abord examiner la plainte avec l'autre membre du sous-comité des plaintes et convenir de la démarche à adopter. Si les membres du sous-comité des plaintes ne s'entendent pas sur une mesure d'enquête, ils soumettent la question à un comité d'examen pour obtenir ses conseils et son opinion.

REJET D'UNE PLAINTE

Le sous-comité des plaintes rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure.

par. 51.4 (3)

TENUE D'UNE ENQUÊTE

Si la plainte n'est pas rejetée, le sous-comité des plaintes mène les enquêtes qu'il estime appropriées. Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider dans la conduite de son enquête. L'enquête est menée à huis clos. La Loi sur l'exercice des compétences légales ne s'applique pas aux activités du sous-comité des plaintes liées à l'enquête sur une plainte.

par. 51.4 (4), (5), (6) et (7)

Veuillez noter : À moins d'indication contraire, tous les renvois figurant dans le présent document se rapportent à la Loi sur les tribunaux judiciaires, L.R.O. 1990, dans sa forme modifiée.

PLAINTES

GÉNÉRALITÉS

Toute personne peut porter plainte devant le Conseil de la magistrature une plainte selon laquelle il y aurait eu incompétence de la part d'un juge provincial. Si une allégation d'incompétence est présentée à un membre du Conseil de la magistrature, elle est traitée comme une plainte portée devant celui-ci. Si une allégation d'incompétence contre un juge provincial est présentée à un autre juge ou au procureur général, cet autre juge ou le procureur général, selon le cas, fournit à l'auteur de l'allégation des renseignements sur le rôle du Conseil de la magistrature et sur la façon de porter plainte, et le renvoie au Conseil de la magistrature.

par. 51.3 (1), (2) et (3)

Une fois qu'une plainte a été portée devant lui, le Conseil de la magistrature est chargé de la conduite de l'affaire

par. 51.3 (4)

SOUS-COMITÉ DES PLAINTES

COMPOSITION

La plainte reçue par le Conseil de la magistrature est examinée par un sous-comité des plaintes du Conseil, qui se compose d'un juge autre que le juge en chef et d'un membre du Conseil qui n'est ni juge ni avocat (si la plainte est portée contre un protonotaire, les procédures s'appliquent à lui de la même manière qu'à un juge). Les membres admissibles du Conseil de la magistrature siègent au sous-comité des plaintes par rotation.

par. 51.4 (1) et (2)

Lorsqu'il mène des enquêtes, recommande provisoirement la suspension ou l'affectation à un autre endroit, prend une décision concernant une plainte à l'issue de son enquête ou assortit de conditions la

par. 51.1 (3)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

par. 51.1 (2)

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

LIGNES DIRECTRICES ET RÈGLES DE PROCÉDURE

Enquête

du Conseil de la magistrature des que possible.

Les membres du sous-comité des plaintes reçoivent régulièrement par écrit un rapport faisant le point sur la situation des dossiers actifs qui leur ont été attribués. Ces rapports d'avancement sont envoyés par la poste à chaque membre du sous-comité au début de chaque mois. Les membres s'efforcent d'examiner chaque dossier sur réception du rapport d'avancement, les dossiers qui leur ont été attribués et de prendre les mesures nécessaires pour soumettre ces dossiers à l'examen du Conseil de la magistrature des que possible.

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On trouvera aux pages 25 à 27 du présent document des renseignements détaillés sur les procédures administratives que doivent suivre les membres du sous-comité des plaintes et ceux du comité d'examen.

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ANNEXE « B »

GUIDE DE PROCÉDURES DU CMO

dans la décision d'un juge ni de modifier sa décision dans un dossier. Seule une cour d'appel peut modifier la décision d'un juge.

Dépôt d'une plainte

Si vous avez une plainte d'inconduite à présenter

contre un juge provincial ou un protonotaire, vous devez formuler votre plainte par lettre signée. La plainte doit inclure la date, l'heure et le lieu de l'audience et autant de détails que possibles qui vous portent à croire qu'il y a eu inconduite. Si votre plainte porte sur un incident qui s'est produit à l'extérieur de la salle d'audience, veuillez fournir tous les renseignements pertinents qui vous portent à croire qu'il y a eu inconduite de la part du juge.

Comment les plaintes sont-elles instruites?

Lorsque le Conseil de la magistrature de l'Ontario reçoit votre lettre de plainte, il vous répondra par écrit pour en accuser réception. Un sous-comité, composé d'un juge et d'un membre du public, mènera une enquête sur votre plainte et fera une recommandation à un comité d'examen composé d'un plus grand nombre de membres. Ce comité d'examen, qui comprend deux juges, un avocat et un autre membre du public, révisera soigneusement votre plainte avant de rendre sa décision.

Décision du Conseil

L'inconduite judiciaire est une affaire des plus sérieuses. Elle peut entraîner des sanctions allant d'un avertissement donné au juge jusqu'à la recommandation de sa destitution. Si le Conseil de la magistrature de l'Ontario décide qu'un juge est l'auteur d'une inconduite, une audience publique pourrait être tenue et le Conseil pourra déterminer quelles sanctions disciplinaires seraient appropriées.

Renseignements supplémentaires

Si vous avez besoin de renseignements ou d'assistance supplémentaires, veuillez composer le (416) 327-5672 dans la région métropolitaine de Toronto. À l'extérieur de la région métropolitaine de Toronto, vous pouvez téléphoner sans frais le 1-800-806-5186. Les utilisateurs de téléimprimeur peuvent composer sans frais le 1-800-695-1118.

Si, après un examen sérieux, le Conseil décide qu'il n'y a pas eu d'inconduite par le juge, votre plainte sera rejetée et vous recevrez une lettre vous informant des raisons du rejet. Dans tous les cas, la décision du Conseil vous sera communiquée.

Rappel...

Le Conseil de la magistrature de l'Ontario enquête seulement sur les plaintes portant sur la conduite de juges provinciaux ou de protonotaires. Si vous n'êtes pas satisfait de la décision d'un juge en cour, veuillez consulter votre avocat pour déterminer quelles sont vos options en matière d'appel.

Toute plainte portant sur la conduite d'un juge nommé par le gouvernement fédéral doit être faite au Conseil canadien de la magistrature à Ottawa.

LE CONSEIL DE LA MAGISTRATURE DE L'ONTARIO AVEZ-VOUS UNE PLAINTE?

L'information contenue dans cette brochure porte sur les plaintes d'inconduite
formées contre les juges provinciaux ou les protonotaires.

Les juges provinciaux en Ontario – Qui sont-ils?

En Ontario, la plupart des causes en droit pénal et en droit de la famille sont entendues par l'un des nombreux juges nommés par le gouvernement provincial pour assurer que justice soit rendue. Les juges provinciaux, qui entendent des milliers de causes par année, ont exercé le droit pendant au moins dix ans avant d'être nommés à la magistrature.

Le système de justice de l'Ontario:

En Ontario, comme dans le reste du Canada, le système de justice est fondé sur la procédure contradictoire. Autrement dit, lorsqu'il y a un différend, les deux parties ont la possibilité de présenter leur version des faits et leurs éléments de preuve à un juge dans une salle d'audience. Nos juges ont le devoir difficile mais essentiel de décider de l'issue d'une cause en se fondant sur les témoignages qu'ils entendent en cour et pour assurer le bon fonctionnement de ce type de système de justice, les juges **doivent** être libres de prendre leurs décisions pour les bonnes raisons, sans se soucier des conséquences de mécontenter l'une des parties, que ce soit le gouvernement, une société, un(e) citoyen(ne) ou un groupe de citoyens.

La décision d'un juge est-elle finale?

La décision du juge peut entraîner de nombreuses conséquences graves. Celles-ci peuvent aller d'une amende à la probation ou une peine de prison ou, dans les causes en droit de la famille, au placement des enfants avec l'un ou l'autre des parents. Souvent, la décision risque fort de

Rôle du Conseil de la magistrature de l'Ontario

Le Conseil de la magistrature de l'Ontario est un organisme qui a été établi par la province de l'Ontario en vertu de la *Loi sur les tribunaux judiciaires*. Le Conseil de la magistrature remplit plusieurs fonctions mais son rôle principal est d'enquêter sur les plaintes d'**inconduite** formées contre des juges provinciaux. Le Conseil est composé de juges, d'avocats et de membres du public. Le Conseil n'a pas le pouvoir d'intervenir publiquement. Le Conseil est composé de juges, d'avocats et de membres du public. Le Conseil n'a pas le pouvoir d'intervenir publiquement.

Conduite professionnelle des juges

En Ontario, nous nous attendons à des normes élevées dans la façon dont justice est rendue et dans la **conduite** des juges qui ont la responsabilité de rendre les décisions. Si vous voulez vous plaindre de l'inconduite d'un **juge provincial** ou **protonotaire**, vous pouvez déposer une plainte officielle auprès du **Conseil de la magistrature de l'Ontario**. Heureusement, l'inconduite d'un juge est un événement rare. Des exemples d'inconduite d'un juge peuvent inclure un parti pris contre une personne en raison de sa race ou de son sexe, un conflit d'intérêt avec l'une des parties ou le manquement au devoir.

LE CONSEIL DE LA MAGISTRATURE
DE L'ONTARIO – AVEZ-VOUS UNE PLAINTES?

ANNEXE « A »

CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

RAPPORT ANNUEL 2002 – 2003

ANNEXES

ANNEXE « A »	Brochure
ANNEXE « B »	Guide de procédures du CMO
ANNEXE « C »	Plan de formation continue
ANNEXE « D »	Lois pertinentes
ANNEXE « E »	Conseil de la Magistrature de l'Ontario dans l'affaire d'une plainte concernant Madame la juge Lesley M. Baldwin

cadre de l'action réciproque. Le plaignant a soutenu que le juge président (celui qui est visé par la plainte), à la date du procès, a fusionné les instances sans motif valable et a obligé le plaignant à se procurer la transcription d'un procès auquel il n'avait pas participé afin de prendre connaissance de la preuve présentée dans la poursuite en libelle diffamatoire intentée contre lui.

Le sous-comité des plaintes a examiné la plainte et a recommandé qu'elle soit rejetée, car, à son avis, elle portait sur des questions de procédure et qu'il n'y avait pas eu d'inconduite judiciaire. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-037/03

Le plaignant est le père d'un enfant qui aurait été agressé par l'un de ses professeurs à l'école qu'il fréquente. L'enseignant, accusé d'agression contre le fils du plaignant, a été acquitté après avoir subi un procès. Le plaignant a allégué que le juge qui avait présidé le procès avait des préjugés et était partial et que, par conséquent, l'issue du procès était faussée.

Le sous-comité des plaintes a examiné la plainte et a demandé et examiné la transcription des motifs du jugement du procès au criminel. Après examen de la transcription, le sous-comité des

plaintes a estimé que le juge de première instance avait tiré des conclusions sur les faits et évalué la crédibilité des parties en s'appuyant sur toute la preuve qui lui avait été soumise. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire concernant l'évaluation de la preuve qui lui avait été soumise et la décision qu'il a rendue. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.



magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-033/03

Le plaignant était l'intimé dans une instance devant la Cour de la famille portant sur la responsabilité et l'obligation de versement d'une pension alimentaire à sa fille. Le plaignant estimait qu'il ne devait pas être tenu de verser une pension alimentaire à sa fille, car elle est âgée de 20 ans. Le tribunal a rendu une ordonnance provisoire concernant le versement d'une pension alimentaire à l'enfant, selon le plaignant, cette décision a été rendue sans qu'il soit tenu compte de son revenu et du fait qu'il avait aussi des obligations de versement d'une pension alimentaire à son épouse et aux deux autres enfants qui habitent avec lui. De plus, le plaignant s'est retrouvé devant le même juge à une conférence de gestion de l'instruction où une autre ordonnance a été rendue, selon laquelle, si la pension alimentaire au profit de l'enfant n'était pas payée, le procès se poursuivrait comme si la requête n'était pas contestée.

Les membres du sous-comité des plaintes ont examiné la plainte et ont estimé que le plaignant était insatisfait des décisions du juge, soit l'obligation de verser une pension alimentaire à sa fille de 20 ans, l'établissement du montant de la pension alimentaire et la possibilité que le procès ait lieu comme si la requête n'était pas contestée. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car, à son avis, il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétion-

naire concernant les ordonnances qu'il a rendues. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-035/03

Le plaignant, poursuivi pour libelle diffamatoire devant la Cour des petites créances, a soutenu qu'au moment où l'affaire a été entendue la première fois, le juge président (qui n'est pas visé par la plainte) a mentionné au plaignant que sa requête était futile et qu'il la rejetterait. En réponse, le plaignant a déclaré qu'il suivait tout simplement les conseils de son avocat en déposant sa requête. Le juge a renvoyé la requête plutôt que de la rejeter afin d'entendre les arguments de l'avocat du requérant, qui n'était pas présent au moment de l'audience.

Lorsque l'affaire s'est retrouvée devant le tribunal, le juge d'abord saisi de l'affaire était malade et son remplaçant n'a pas rejeté la requête et a autorisé le requérant à procéder. Le plaignant a ajouté que le demandeur poursuivait aussi une autre personne pour libelle diffamatoire et que la partie défenderesse a intenté une action réciproque. De plus, selon le plaignant, puisque le requérant dans les deux poursuites en libelle diffamatoire n'avait pas payé les frais judiciaires permettant d'amorcer l'instance, l'ensemble du dossier s'est retrouvé devant le tribunal dans le

droit de voir ses enfants. Le plaignant était en désaccord avec la décision de la juge et souhaitait que la cause soit entendue de nouveau. Selon le plaignant, plusieurs mois après la conclusion de l'affaire devant la Cour de la famille, la même juge a présidé l'instance où le plaignant a été accusé de conduite avec facultés affaiblies. Le plaignant a plaidé coupable à cette accusation et a reçu une sentence qui, à son avis, nuisait à son droit de voir ses fils. Selon le plaignant, la juge aurait dû se récuser de l'instance au criminel parce qu'elle avait entendu une affaire devant la Cour de la famille concernant le plaignant quelques mois auparavant. Le plaignant était aussi d'avis que la sentence dans le procès au criminel était excessivement dure et que le fait que la juge connaissait son dossier en matière familiale aurait pu jouer un rôle dans la décision relative à la sentence.

Le sous-comité des plaintes a examiné la plainte et a estimé que le plaignant était insatisfait de la sentence imposée dans le procès au criminel et de celle rendue dans l'instance devant la Cour de la famille. Le sous-comité a recommandé que la plainte soit rejetée, car aucune information n'était alléguée de partialité formée par le plaignant. De plus, le sous-comité des plaintes a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont la juge avait exercé son pouvoir discrétionnaire en présidant à la fois l'instance devant la Cour de la famille et l'instance au criminel et en rendant sa décision. Si la juge a commis des erreurs de droit, et le Conseil juge a commis des erreurs de droit, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la

plainte soit rejetée, car il a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire concernant les décisions rendues. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature de l'Ontario. Le sous-comité des plaintes a souligné que le fait que l'une des décisions du juge a été portée en appel et que la Cour d'appel a constaté l'existence de certaines erreurs de droit n'équivaut pas à une conclusion d'inconduite judiciaire. Le sous-comité des plaintes a aussi déclaré que la suite d'une affaire peut être entendue par le même juge de première instance et que l'on ne peut empêcher ce dernier d'en être saisi de nouveau. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée. Le comité d'examen s'est inquiété au sujet de la sécurité des enfants en question par suite des allégations contenues dans les lettres de la plaignante et a estimé qu'il avait, en vertu de la Loi sur les services à l'enfance et à la famille, l'obligation légale d'envoyer des copies des lettres de plainte à la Société d'aide à l'enfance de la région dans laquelle habite la plaignante.

DOSSIER N° 09-032/03

Le plaignant était partie à une instance devant la Cour de la famille et accusé dans un procès au criminel. Dans l'affaire devant la Cour de la famille, le plaignant a déclaré qu'une ordonnance avait été rendue, en son absence, modifiant son

mière infraction. Selon la plaignante, cette sentence était « dure et cruelle pour une première infraction » et le juge était sûrement « incompétent pour avoir imposé une sentence aussi dure ».

Le sous-comité des plaintes a examiné la plainte et a recommandé au comité d'examen de la rejeter. Selon le sous-comité, la plainte visait la décision du juge d'imposer la sentence, une question qui peut être portée en appel. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-024/03

La plaignante est la grand-mère maternelle de deux enfants confiés par leur mère aux soins de la Société d'aide à l'enfance. La plaignante craignait que sa fille, la mère des enfants, n'obtienne pas un procès équitable au moment où les questions de protection, de droit de garde et de droit de visite (avec ou sans supervision) seraient jugées. Selon la plaignante, elle-même et sa fille croient que le juge avait déjà pris sa décision en raison de commentaires qu'il avait formulés pendant une conférence de gestion de l'instruction à laquelle sa fille a assisté.

Le sous-comité des plaintes a examiné la plainte et a demandé et examiné la transcription de la conférence de gestion de l'instruction. Le sous-comité des plaintes a noté que toutes les parties

à l'instance étaient représentées par un avocat, à l'exception du père biologique. De l'avis du sous-comité des plaintes, le juge présidant une conférence de gestion de l'instruction et il informait les avocats des documents dont ils auraient besoin au procès afin de soutenir leurs arguments. Selon le sous-comité des plaintes, le juge a exprimé l'opinion que les arguments de la Société d'aide à l'enfance étaient très solides et que la mère devait lui opposer des arguments aussi solides afin d'éclaircir ses demandes. Le sous-comité des plaintes a noté que le juge avait formulé des suggestions sur la façon dont l'affaire pourrait être réglée dans l'intérêt des enfants et de la mère et avait insisté sur le fait que les parties devaient définir les questions qui pouvaient être tranchées avant le début du procès. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car, à son avis, rien ne permettait d'étayer l'allégation d'inconduite judiciaire et la transcription n'étayait pas les allégations formulées à l'égard du juge et des commentaires que ce dernier aurait formulés. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-028/03

La plaignante est la grand-mère d'enfants au centre d'un différend prolongé sur les droits de garde et de visite. Selon la plaignante, le juge saisi de l'affaire rend de mauvaises décisions; il devrait donc être dessaisi du dossier.

Le sous-comité des plaintes a examiné la plainte et la transcription fournie par la plaignante. Le sous-comité des plaintes a recommandé que la

a précisé que le juge de première instance est autorisé à se prononcer sur la crédibilité d'un accusé et qu'il l'a fait correctement, sans utiliser de langage déplacé. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-021/03

La plaignante a déclaré que son mari s'est présenté devant la Cour de la famille afin d'obtenir le droit de voir plus souvent son fils issu de leur précédent mariage. Le mari de la plaignante voulait aussi modifier les modalités des périodes de garde afin qu'il puisse venir chercher son fils à l'école plutôt qu'au domicile de la mère afin d'éviter des confrontations avec son ex-épouse, stressantes pour toutes les parties. Selon la plaignante, pendant la procédure préalable au procès, le juge président a indiqué qu'il serait prêt à accorder cette modification du droit de visite, mais qu'il était incapable de le faire parce que l'avocat de l'ex-épouse avait déclaré ne pas avoir été avisé dans les règles de la motion de modification de l'ordonnance précédente concernant le droit de visite. La plaignante a soutenu que le juge président avait déclaré que, si un avis était signifié à l'ex-épouse en bonne et due forme, il serait porté à accorder la modification demandée à la prochaine comparution. Selon la plaignante, à la comparution suivante plusieurs mois plus tard, la motion de modification du droit de visite se retrouvait devant le tribunal et l'avis avait été signifié à l'ex-épouse et à son avocat. La plaignante a ajouté que le juge, après avoir entendu la motion et la plaidoirie de la mère de l'enfant, a rejeté la motion et a condamné le père aux dépens. Selon la plaignante, la

motion a été présentée en cour uniquement parce que le juge leur avait donné un « conseil juridique ».

Le sous-comité des plaintes a examiné la plainte et a demandé et examiné les transcriptions des deux instances. Le sous-comité des plaintes a noté que les transcriptions montraient que les faits avaient suscité de longues discussions et que les instances étaient devenues compliquées et déroutantes à cause des interventions des avocats des deux parties. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire dans l'examen des faits, l'évaluation des plaidoiries et la décision de rejeter la motion. Le sous-comité des plaintes a souligné de plus que le juge a rendu sa décision après avoir tenu pleinement compte des documents et de l'information soumis par les deux parties. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-022/03

Le fils de la plaignante a reçu une sentence d'un juge du Tribunal de la jeunesse. La plaignante a déclaré que son fils n'avait jamais eu affaire aux tribunaux, qu'il ne possédait pas non plus de dossier de criminalité juvénile et que, malgré tout, il avait été incarcéré pendant un an à sa pre-

plaignant a déclaré que ces « liens particuliers » étaient évidents parce que, chaque fois que l'avocat de la partie adverse demandait des « changements de date, le juge les lui accordait rapidement et facilement, au détriment de [ses] intérêts ».

Le sous-comité des plaintes a examiné la plainte et a demandé une copie de la transcription de l'instance. Les Services aux tribunaux ont informé le Conseil qu'aucun sténographe judiciaire n'était présent au moment de l'audience et que, pour cette raison, il était impossible d'obtenir une transcription. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car aucune preuve objective n'était l'allégation selon laquelle le juge avait des préjugés en faveur de l'avocat du défendeur. Le sous-comité des plaintes a estimé que l'allégation au sujet des « liens particuliers » du juge avec l'avocat de la défense était trop vague pour étayer des allégations de partialité et d'inconduite. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-019/03

Le plaignant, qui faisait face à des accusations, avait demandé que son procès se déroule en français. Le plaignant a soutenu que le juge de première instance ne maîtrisait pas suffisamment bien le français pour lui permettre de présenter sa défense. Le plaignant a aussi critiqué le fait que la preuve du ministère public lui avait été transmise en anglais seulement.

Le sous-comité des plaintes (dont les deux membres sont bilingues) a examiné la plainte et a demandé la bande sonore de l'instance dont elle

a écouté le contenu. Le sous-comité des plaintes a souligné que le procès s'était déroulé en français et que, à son avis, le juge avait une excellente connaissance du français. De l'avis du sous-comité des plaintes, la bande sonore de l'instance confirmait que le juge avait donné à de nombreuses reprises l'occasion au plaignant, qui assurait sa propre défense, de poser des questions aux témoins, de présenter sa défense et de comprendre le processus judiciaire. Le sous-comité des plaintes a aussi noté que le plaignant n'avait soulevé aucun malentendu ou problème de compréhension pendant le procès. Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce que sans fondement, car l'écoute de la bande sonore ne permettrait pas d'étayer les allégations du plaignant. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-020/03

Dans un procès au criminel, le plaignant a été reconnu coupable de deux chefs d'accusation d'agression. Il a soutenu que le juge de première instance s'était montré partial au moment du prononcé de la sentence, car il aurait dit qu'il ne fallait pas croire le plaignant et que ce dernier était « un menteur ».

Le sous-comité des plaintes a examiné la plainte et les transcriptions de l'instance. Le sous-comité des plaintes a recommandé au comité d'examen de rejeter la plainte parce que sans fondement après que l'examen de la transcription de l'instance eut démontré que les remarques déplacées attribuées au juge par le plaignant n'avaient jamais été formulées. Le sous-comité des plaintes

DOSSIER N° 09-017/03

La plaignante a été déboutée après avoir présentée une requête à la cour pour obtenir la garde de sa fille. Elle a soutenu que le juge de première instance avait rendu son ordonnance sans qu'elle-même soit représentée par un avocat et qu'il avait aussi présidé la conférence de règlement.

Le sous-comité des plaintes a examiné la plainte et a recommandé qu'elle soit rejetée. Le sous-comité des plaintes a souligné qu'il n'est pas nécessaire qu'une partie soit représentée par un avocat dans une instance en matière familiale et que le tribunal n'est pas tenu de fournir de première instance n'a pas accepté les prétentions du demandeur et a rejeté sa demande. Le juge a aussi condamné le plaignant aux dépens. Le plaignant a soutenu que « le comportement et la décision du juge sont une négation de la loi, de la réalité scientifique, des règles d'éthique, du bon sens et des convenances ».

plaignant. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-016/03

Le plaignant, demandeur dans une affaire devant la Cour des petites créances, cherchait à obtenir une indemnisation pécuniaire de la perte d'un grand fabricant/détaillant de produits électroniques par suite de la perte d'un nouvel ordinateur. Le plaignant poursuivait le fabricant/détaillant parce que ce dernier avait installé un logiciel prétendument défectueux qui avait rendu son nouvel ordinateur inutilisable. Le juge de première instance n'a pas accepté les prétentions du demandeur et a rejeté sa demande. Le juge a aussi condamné le plaignant aux dépens. Le plaignant a soutenu que « le comportement et la décision du juge sont une négation de la loi, de la réalité scientifique, des règles d'éthique, du bon sens et des convenances ».

Le sous-comité des plaintes a examiné la plainte et recommandé qu'elle soit rejetée. À son avis, il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire en examinant et en évaluant le bien-fondé de l'affaire et les décisions qu'il avait rendues relevantes de sa compétence. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-018/03

Le plaignant a perdu sa cause à titre de demandeur devant la Cour des petites créances. Il cherchait à obtenir une indemnisation d'un collègue de l'Ontario pour fausse représentation et négligence. Le plaignant a soutenu que le juge de première instance, qui a rejeté sa poursuite, avait un préjugé, comme le « démontrent » ses « liens particuliers » avec l'avocat de la partie adverse qui représentait le défendeur, soit le collègue. Le

DOSSIER N° 09-015/03

Le plaignant a déclaré que ses problèmes avec le système de justice criminelle ont débuté au moment où sa femme a eu une liaison avec un ex-employé. Le plaignant et son ex-épouse étaient propriétaires d'une société minière pour laquelle cet employé avait travaillé. Selon le plaignant, au cours d'un incident qui s'était déroulé lorsque les trois se trouvaient dans la maison de l'ex-employé, le plaignant a été agressé par l'ex-employé qui a par la suite été accusé de voies de fait causant des lésions corporelles. Au procès en 1993, l'accusé (c.-à-d. l'ex-employé) a plaidé coupable à une accusation réduite d'agression et le juge président a accepté une requête conjointe de condamnation avec sursis et de probation. Le plaignant n'était pas en cour le jour où l'ex-employé a répondu à l'accusation et, semble-t-il, n'a pas été invité à fournir une déclaration de la victime. Le plaignant estime donc que, à son avis, le procureur de la Couronne a été négligent et que le juge président a fermé les yeux sur les irrégularités commises par le procureur de la Couronne.

Le plaignant a divorcé et, par la suite, a été reconnu coupable dans une autre ville par un autre juge de harcèlement criminel contre son ex-épouse. Le plaignant a déclaré que la sentence qui lui avait été imposée comprenait notamment l'obligation de ne pas communiquer avec son ex-épouse et de ne pas se rendre à sa résidence qui, à l'époque, était aussi la résidence de l'ex-employé. Le plaignant a admis avoir contrevenu à cette condition de son ordonnance de probation en 1997; à ce moment-là, l'ex-employé a brandi une carabine pour tenter de faire fuir le plaignant. Par suite de cet incident, l'ex-employé

a été accusé d'usage d'une arme à feu. Le plaignant a déclaré que l'ex-employé avait comparu devant le juge qui l'avait jugé en 1993 et qu'il avait plaidé coupable à une accusation d'usage négligent d'une arme à feu. Le procureur de la Couronne et l'avocat de la défense ont présenté au juge une requête conjointe de condamnation avec sursis qui a été acceptée par le juge. Le plaignant a allégué que le tribunal ne s'était pas conduit correctement et il a soutenu que le juge de même que le procureur de la Couronne avaient un préjugé en faveur de l'accusé et contre lui.

Le plaignant a exprimé son insatisfaction à l'égard de la façon dont le procès contre l'ex-employé s'est terminé et des sentences imposées par le juge en question. Le plaignant devait répondre à d'autres accusations criminelles dans le même territoire de compétence et souhaitait que sa cause soit jugée dans une autre ville afin d'éviter le juge qu'il soupçonne d'entretenir des préjugés contre lui. Le plaignant a fourni des transcriptions de ses diverses comparutions et les a aussi transmises à d'autres organismes, comme le Bureau de l'Ombudsman et le Procureur général, après desquels il avait déjà porté plainte.

Le sous-comité des plaintes a examiné les documents et les transcriptions relatifs à la plainte. Le sous-comité a souligné que le Conseil de la magistrature de l'Ontario n'était pas habilité à intervenir dans le transfert d'une affaire judiciaire d'une ville à une autre. Le sous-comité des plaintes a recommandé au comité d'examen de rejeter la plainte parce que l'examen des transcriptions au dossier ne permettait pas d'évaluer les allégations de préjugé formulées par le

que la juge exerçait de façon appropriée son rôle de juge à la Cour de la famille en donnant son évaluation de la preuve entendue jusqu'à ce stade et en exprimant son opinion sur le dénouement probable, compte tenu des positions exprimées par les parties.

Le Conseil a noté que les parties, conseillées par leurs avocats, avaient conclu un règlement amiable et que l'affaire avait été résolue. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont la juge avait exercé son pouvoir discrétionnaire en donnant son évaluation préliminaire de la preuve qui lui avait été soumise. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-013/03

La plaignante était défenderesse dans une instance criminelle où elle avait été accusée de délit de fuite en vertu du Code criminel. Après son procès devant la Cour de justice de l'Ontario, elle a été reconnue coupable. La plaignante a soutenu que la Cour aurait dû accepter ses explications et l'acquitter.

Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car cette dernière portait sur la décision rendue par le juge et ne relevait pas de la compétence du Conseil de la magistrature. Selon le sous-comité des plaintes, il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire en déclarant la plaignante coupable et la

lettre de la plaignante ne contenait aucune allégation d'inconduite. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-014/03

Le plaignant et sa conjointe sont parties à une instance devant la Cour de la famille dans laquelle la Société d'aide à l'enfance est en cause. Le plaignant semble insatisfait de la décision rendue par le juge de première instance et au moment de rendre son jugement, formulé des commentaires qui avaient eu des répercussions négatives sur la santé mentale de son épouse. Le plaignant craint que la santé mentale de son épouse se détériore et que cette situation puisse lui être reprochée.

Le sous-comité des plaintes a examiné la plainte et a recommandé qu'elle soit rejetée. Selon le sous-comité des plaintes, la plainte porte sur la décision d'un juge et ne permet pas d'étayer une allégation d'inconduite judiciaire. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-011/03

Le plaignant était accusé dans une affaire criminelle de possession de biens volés d'une valeur de moins de 5 000,00 \$ sous deux chefs d'accusation. Après le procès, qui s'est déroulé sur deux jours, le plaignant a été déclaré coupable et a reçu sa sentence. Le plaignant a écrit au Conseil de la magistrature et soutenu que des membres du service de police local avaient collaboré avec des membres du bureau local du procureur de la Couronne afin de le poursuivre de façon préjudiciable et malicieuse et qu'ils avaient « influencé la décision du juge et dominé le tribunal lui-même ».

Le plaignant a aussi allégué que la divulgation du dossier et des preuves du procureur de la Couronne contre lui avait été retardée. Le plaignant a ajouté qu'il avait déposé une plainte devant la Commission de police de l'Ontario et que l'affaire traînait depuis environ deux ans. Le plaignant a soutenu aussi que le juge en question l'avait déclaré coupable uniquement à partir de preuves circonstancielles et que le jugement avait été porté en appel. Le plaignant a prétendu que le juge en question avait laissé la police et (ou) le procureur de la Couronne influencer son jugement, plutôt que de prendre connaissance de la preuve ou des éléments de preuve insuffisants qui avaient été présentés en cour.

Le sous-comité des plaintes a demandé et examiné une copie de la transcription de l'instance et a recommandé que la plainte soit rejetée, car il a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire en examinant et en évaluant la preuve et que les décisions qu'il avait

DOSSIER N° 09-012/03

rendues relevaient de sa compétence. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

La plaignante, qui n'était pas partie à l'instance, mais plutôt la mère de l'une des parties en cause dans une affaire devant la Cour de la famille touchant la garde d'un enfant et le droit de visite, s'est plainte de la longueur induite du processus et a soutenu qu'elle avait passé un certain nombre de jours au tribunal en compagnie de son fils, le père de l'enfant visé par l'affaire, où on a très peu progressé. La tenue de l'instance a été décidée et, au cours de cette dernière, la juge a informé les avocats des parties que la garde conjointe était une issue peu probable et qu'ils devraient plutôt tenter d'arriver à une entente. La plaignante a déclaré que les parties avaient finalement résolu l'affaire, à son grand déplaisir. La plaignante estimait que la juge aurait dû laisser l'instance suivre son cours et rendre une décision après avoir pris connaissance de l'ensemble de la preuve.

Après avoir examiné la plainte, le sous-comité des plaintes a constaté que la plaignante était insatisfaite de l'opinion préliminaire donnée par la juge dans une instance devant la Cour de la famille, de même que du rôle de la juge pendant l'instance. Le sous-comité des plaintes a estimé

DOSSIER N° 09-008/03

Le plaignant est l'intimé dans une requête de protection d'un enfant déposée par la Société d'aide à l'enfance. Le plaignant a soutenu que le juge avait déclaré pendant l'audience avoir vu à l'ordinateur une information selon laquelle le plaignant appelait la police chaque jour. Le plaignant a de plus soutenu que le juge avait déclaré que le plaignant ferait du tort à l'enfant visé par l'instance et que ce dernier avait besoin de protection. Le plaignant n'était pas dans la salle d'audience lorsque ces déclarations auraient été faites par le juge, mais il en a été informé par sa petite amie, la mère de l'enfant qui avait besoin de protection, qui elle était présente.

Le sous-comité des plaintes a examiné la plainte et a demandé la transcription de l'instance. Les Services aux tribunaux ont confirmé que l'instance mentionnée par le plaignant était une « conférence de gestion de l'instruction » qui n'avait pas été enregistrée; par conséquent, il n'existe aucune transcription. Le sous-comité des plaintes a demandé et obtenu du juge visé une réponse à la plainte. Dans sa réponse, le juge a nié avoir consulté un ordinateur afin de déterminer combien de fois le plaignant avait appelé la police et a ajouté que, de toute façon, il n'aurait pas eu accès à ce type d'information. Le sous-comité des plaintes a souligné que l'affaire était instruite précisément parce que l'enfant avait besoin d'être protégé du plaignant et que c'était là la position défendue par la Société d'aide à l'enfance. Le sous-comité des plaintes a aussi noté que le plaignant n'était pas présent dans la salle d'audience et qu'il déposait sa plainte sur la foi de renseignements qui lui avaient été transmis par sa petite amie, la mère de l'enfant, dont la

DOSSIER N° 09-009/03

santé mentale entraînait en jeu dans cette instance. Le sous-comité des plaintes a recommandé au comité d'examen de rejeter la plainte fautive fondement. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

Le sous-comité des plaintes a examiné la plainte et a demandé et examiné les transcriptions de l'instance. Le sous-comité des plaintes a recommandé au comité d'examen de rejeter la plainte, car la transcription ne contenait nullement les remarques attribuées au juge, et, à son avis, le plaignant s'était adressé au Conseil de la magistrature parce qu'il s'opposait à l'ordonnance que le juge avait rendue à son sujet. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

« tramer quelque chose contre lui ». Le plaignant a de plus allégué que le juge essayait de plaignant afin de protéger la mère de l'enfant. Le rendre une ordonnance restrictive contre le qu'il avait violé la mère de l'enfant et qu'il fallait dit qu'il n'était pas le père biologique de l'enfant, « Le plaignant a aussi allégué que le juge aurait inel » et une « personne violente et dangereuse juge aurait dit que le plaignant était un « crim- des faussetés à son sujet. Selon le plaignant, le

DOSSIER N° 09-006/03

Le plaignant s'est défendu lui-même contre une accusation de manquement aux conditions de la probation. À la fin du procès, il a été acquitté. Le plaignant a allégué que les commentaires du juge, au moment où il a donné les « motifs du jugement », étaient « inacceptables, inconvenants, blessants, dégradants, puérils et immatures ».

Le sous-comité des plaintes a examiné la plainte et a demandé et examiné la transcription de l'instance. Selon le sous-comité des plaintes, le juge président a fait preuve de patience et a accordé au plaignant toute la latitude voulue pour présenter sa version des faits. Le sous-comité des plaintes a noté que le juge a, de façon très équitable, donné les motifs afin d'expliquer au plaignant qu'il était « son pire ennemi » et que, à son avis, ses remarques n'étaient pas inconvenantes ni abaissantes. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car, à son avis, il n'y avait pas eu inconvénient judiciaire. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-007/03

Le plaignant, qui n'était pas représenté par un avocat, était accusé de nombreuses infractions, dont induire volontairement en erreur, aggraver un agent de police et résister à un agent de la paix. Le plaignant avait comparu devant le juge de première instance concernant des motions préalables à l'instruction et diverses conférences préparatoires et il avait formulé un certain nombre d'allégations au juge concernant son incapacité de préparer sa défense sans avocat, tout en

étant en détention. Le plaignant a soutenu que, pendant qu'il était en isolement dans un centre de détention local, il s'était fait enlever sa copie du Code criminel (qui lui aurait été remise par un autre juge), ainsi que des documents relatifs à la preuve qui lui avaient été remis par le bureau du procureur de la Couronne. Le juge visé par la plainte a ordonné que l'on remette au plaignant des photocopies des pages du Code criminel relatives aux accusations qui étaient portées contre lui et a demandé au plaignant les noms et adresses des témoins qu'il souhaitait faire comparaître de sorte que le personnel de la Cour puisse préparer les assignations pour son compte et que la police soit appelée à les signifier. Le plaignant allégué que le juge l'a « aidé » à préparer sa défense contre sa volonté et qu'il lui a fourni des conseils juridiques non sollicités.

Le sous-comité des plaintes a demandé et examiné une copie de la transcription et de la bande sonore de certaines des diverses instances. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il a conclu qu'il n'y avait pas de preuve d'inconvénient judiciaire dans la façon dont le juge avait tenté de s'assurer que le plaignant disposait des outils nécessaires pour assurer une défense pleine et entière contre les chefs d'accusation qui pesaient contre lui, compte tenu du fait que le plaignant refusait l'assistance d'un avocat. Le sous-comité des plaintes a constaté que le juge a fait de grands efforts pour expliquer le processus au plaignant et qu'il a fait preuve de beaucoup de patience et d'une grande équité en toute occasion. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

faire l'objet d'un appel et, en l'absence d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-005/03

Le plaignant, qui se décrit lui-même comme un « médiateur et non un avocat », a déclaré qu'il avait comparu devant le juge à deux reprises à la Cour des petites créances, sans être représenté par un avocat. Le plaignant a allégué qu'après l'une de ses comparutions, il avait demandé à rencontrer le juge en chambre et que, au cours de la conversation, il avait constaté qu'un ex-voisin du plaignant, aussi juge dans un autre tribunal, était une connaissance du juge. Le plaignant a ajouté qu'il s'était récemment rendu en cour pour rencontrer de nouveau le juge en pensant qu'il pourrait aider sa sœur, une avocate qui s'installait en Ontario, à se trouver un poste dans le domaine juridique. Le plaignant aurait demandé au greffier du tribunal un rendez-vous avec le juge en chambre pour discuter d'une question personnelle. Le plaignant a mentionné dans sa lettre au Conseil qu'au moment où il est retourné voir le juge, « il avait piqué une colère digne de celle de son fils de dix ans », mettant tout le monde mal à l'aise.

Le sous-comité des plaintes a examiné la plainte et a demandé et examiné la réponse de la préposée à l'établissement du rôle, la personne à laquelle le plaignant avait parlé à la date en question, de même que deux réponses du juge, dont l'une comprenait aussi des déclarations d'autres

Le personnel du même tribunal a aussi déclaré que le plaignant, au fil des ans, s'était présenté au tribunal et avait demandé au personnel de dactylographier des textes pour lui, qu'il avait trompé le personnel au sujet de ses liens avec des membres du personnel de la Cour, qu'il avait déclaré faussement être un employé du ministère du Procureur général ayant une « responsabilité de supervision » des tribunaux et qu'il avait affirmé à tort être un avocat. Le sous-comité des plaintes a déclaré que divers membres du personnel de la Cour avaient décrit le plaignant comme un homme ayant une « attitude courtoise mais menaçante » qui « ne se décourage pas facilement ». Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce que sans fondement après avoir passé en revue les déclarations du juge et du personnel de la Cour concernant leur expérience avec le plaignant au cours des années précédentes et à l'égard de l'incident le plus récent. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

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lui refusant les dépens est « injuste et mauvaise » et le juge n'avait pas de « raisons logiques » de refuser sa demande. La plaignante a ajouté que le fait de n'avoir pas obtenu les dépens l'avait empêchée et avait empêché ses fils d'acheter les médicaments et la nourriture dont ils avaient besoin et qu'elle avait subi un préjudice sur le plan financier et émotif.

Le sous-comité des plaintes a examiné la plainte et a constaté que celle-ci portait sur l'exercice de la discrétion du juge concernant l'attribution des dépens. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il estimait qu'il n'y avait ni allégation ou preuve d'inconduite judiciaire dans l'exercice de la discrétion du juge et que les décisions prises relevaient de sa compétence. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-004/03

La plaignante a comparu devant la Cour de la famille comme défenderesse à l'égard d'une motion présentée par son ex-mari visant à annuler son droit de visite auprès des enfants du couple. La plaignante a allégué que le juge qui avait été saisi de la motion avait présidé à tort le procès après avoir présidé les conférences pré-paratoires et entendu d'autres motions, contrairement aux règles de procédure civile. La

plaignante a aussi allégué que le juge a autorisé à tort l'utilisation d'allégations d'agression dans une instance civile, contrairement aux dispositions de la Charte des droits. La plaignante était en désaccord avec les conclusions de la Cour de la famille en vertu desquelles l'ordonnance demandée par son ex-mari a été rendue.

Le sous-comité des plaintes a examiné la plainte et a demandé et examiné la transcription de l'instance finale. Le sous-comité des plaintes a établi que les règles de procédures civiles ne s'appliquent pas aux affaires soumises à la Cour de justice de l'Ontario, Division de la famille, mais que les règles en matière de droit de la famille régissent les instances devant la Cour de la famille. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire pour examiner les motions et les déclarations sous serment et rendre les ordonnances demandées par le requérant. Le sous-comité des plaintes a souligné qu'un juge présidant une conférence préparatoire peut rendre une ordonnance temporaire ou définitive, pourvu qu'un avis approprié soit donné et que rien ne prévoie que l'affaire soit confiée à un autre juge au procès. Le sous-comité des plaintes a établi de plus que le fait qu'un juge président accepte et examine des allégations d'agression ne constitue pas une violation de droits garantis par la Charte. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature de l'Ontario n'a rien trouvé à cet égard, ces dernières peuvent

Le sous-comité des plaintes a déclaré que l'audience préparatoire au procès s'était déroulée en chambre et que son contenu ne figurait pas au dossier. Le sous-comité des plaintes a demandé une réponse du juge à la plainte et l'a examinée. Dans sa réponse, le juge a nié avoir formulé les remarques alléguées et a souligné que l'ordonnance de dépens rendue contre la partie défenderesse démontrait qu'il avait aidé la partie demanderesse. Vu que le juge a rejeté les alléguations et qu'aucune preuve objective n'a permis de corroborer ces alléguations, le sous-comité des plaintes a recommandé que la plainte soit rejetée. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-049/03

Le plaignant, défendeur dans une instance criminelle, a déclaré que, même s'il avait un certificat d'aide juridique, il avait de la difficulté à retenir les services d'un avocat. Le plaignant a comparu à un certain nombre de reprises et a soutenu que le juge président n'a pas écouté ses explications sur les raisons pour lesquelles il n'avait pas retenu les services d'un avocat. Le plaignant a aussi allégué que, lors de l'une de ces comparutions, chaque fois qu'il essayait de parler, le juge lui disait : « Ne vous lancez pas sur ce terrain. » Le plaignant a de plus allégué qu'à la fin d'une comparution devant le tribunal pour fixer la date du procès, le juge « a ordonné que l'on me détienne jusqu'à ce que je puisse téléphoner à un avocat potentiel à partir du tribunal ».

Le sous-comité des plaintes a examiné la plainte et a demandé et reçu la transcription de l'ensem-

ble des comparutions du plaignant devant le juge visé par la plainte. Le sous-comité des plaintes a pris connaissance des transcriptions reçues à l'égard des dix (10) comparutions et ajournements précédant l'établissement de la date du procès. En examinant ces transcriptions, le sous-comité des plaintes a constaté que le plaignant avait eu recours à tour de rôle aux services de deux avocats et d'un troisième avocat qui l'a aidé durant le procès. Selon le sous-comité des plaintes, le juge, en tout temps, a agi correctement et fait preuve d'empathie envers le plaignant qui avait du mal à se trouver un avocat. De l'avis du sous-comité, le juge président souhaitait aussi que l'on procède et que le plaignant ne subisse pas l'inconvénient d'avoir à se représenter inutilement en cour de nouveau. Le sous-comité des plaintes a établi que rien dans la transcription n'étayait l'allégation du plaignant au sujet de commentaires du juge (« Ne vous lancez pas sur ce terrain ») et rien dans les transcriptions ne donne à penser que le juge « a ordonné qu'on le détienne jusqu'à ce qu'il puisse téléphoner à un avocat potentiel à partir du tribunal ». Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car rien ne permettait d'étayer l'allégation d'inconduite judiciaire. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 09-001/03

La plaignante a perdu la garde de ses fils qui ont été placés dans une famille d'accueil par la Société d'aide à l'enfance. À la fin d'une audience devant la Cour de la famille, la plaignante a demandé une ordonnance de dépens que le juge lui a refusée. Selon la plaignante, l'ordonnance

DOSSIER N° 08-046/03

La plaignante est une représentante qui a com-

partu pour le compte de ses clients dans une affaire devant la Cour des petites créances. Les clients de la plaignante avaient intenté une poursuite contre une entreprise d'« imperméabilisation » qui avait effectué des travaux à leur domicile, travaux qui ne pouvaient être garantis parce que l'entreprise, alléguait-on, ne détenait pas de permis de la Ville de Toronto. La plaignante a déclaré qu'avant de se rendre au tribunal, elle avait effectué des recherches sur l'entreprise et obtenu une lettre du directeur du Service des permis municipaux dans laquelle on pouvait lire que « tous les entrepreneurs en imperméabilisation sont tenus par la loi de détenir un permis ».

La plaignante a soutenu qu'elle a tenté de présenter cet élément de preuve devant le juge, mais que ce dernier a refusé d'admettre la lettre en preuve.

Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car elle doit plutôt faire l'objet d'un appel. De plus, en l'absence de preuve d'inconduite judiciaire, l'affaire ne relève pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-047/03

Le plaignant était partie à une instance devant la Cour de la famille, traitant de problèmes de garde provisoire et permanente et de pension alimentaire provisoire et permanente concernant les enfants issus de son mariage précédent. Le plaignant a déclaré que l'affaire s'était retrouvée devant les tribunaux à un certain nombre de

DOSSIER N° 08-048/03

Le plaignant est un des parents de la partie demanderesse dans une instance devant la Cour des petites créances dans laquelle la partie défenderesse ne s'est pas présentée. Le plaignant a soutenu que le juge, durant l'audience préparatoire au procès, n'était pas intéressé à consulter les documents de la partie demanderesse et qu'il a intimé à cette dernière l'ordre de se taire.

repris avant d'être finalement jugée. Le plaignant a souligné que les décisions du juge, traitant de sa crédibilité, de sa stabilité et de sa capacité de verser une pension alimentaire, lui ont été défavorables. Le plaignant a allégué que le juge avait un parti pris contre lui.

Après avoir examiné la plainte, le sous-comité des plaintes a établi que rien dans la plainte ne permettait d'étayer une allégation d'inconduite judiciaire. Le sous-comité des plaintes estimait que le plaignant était tout simplement en désaccord avec les décisions rendues par le juge. Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce qu'il a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire et que les décisions qu'il avait rendues relevaient de sa compétence. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

plaignante a déclaré qu'elle était traumatisée par l'attitude prétendument dédaigneuse du juge de première instance.

Le sous-comité des plaintes a examiné la plainte et la transcription de l'instance de même que de la procédure relative à la détermination de la sentence. Après examen des transcriptions, le sous-comité des plaintes a estimé que le juge de première instance n'avait pas fait preuve d'inconduite judiciaire. Le sous-comité des plaintes a souligné que le juge avait évalué la crédibilité de tous les témoins et qu'il avait tiré des conclusions pertinentes. Le sous-comité des plaintes a ajouté que le juge a constaté qu'il y avait eu agression, soit des atouchements non sollicités, mais qu'il s'agissait en fait d'une agression très mineure. Le sous-comité des plaintes a souligné que le juge avait parlé de la « nature anodine » de l'agression, une conclusion correspondant tout à fait à la preuve soumise au procès selon l'avis du sous-comité des plaintes. Ce dernier a aussi estimé que la sentence imposée était tout à fait proportionnelle à l'infraction commise.

Le sous-comité des plaintes a ajouté que le juge a expliqué pour quelle raison il avait acquitté l'accusé et l'avait obligé à s'engager à ne pas troubler l'ordre public et qu'il a donné ses explications poliment et de façon à transmettre l'information pertinente. Le sous-comité des plaintes a recommandé que la plainte soit rejetée puisque aucune inconvénience ne pouvait être reprochée au juge. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

membre de la famille et de méfait, était présente en cour lorsque son fils a reçu sa sentence. La plaignante a allégué que le juge s'adressait tous les jours à son fils en criant, ne l'a pas laissé parler ni n'a laissé parler son avocat et a rendu des ordonnances illégales de la part d'un tribunal de juridiction criminelle (la plaignante a allégué que le juge avait notamment ordonné le versement d'une pension alimentaire à l'enfant).

Le sous-comité des plaintes a examiné la plainte et la transcription et a écouté la bande sonore de l'instance. Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce que sans fondement, car l'examen de la transcription et de la bande sonore n'avait pas permis d'étayer les allégations formulées contre le juge par la plaignante. Le sous-comité des plaintes a souligné que le juge n'avait pas crié et que, en fait, il s'était montré courtois, à la fois à l'égard de l'accusé, du procureur de la Couronne et de l'avocat de la défense. Selon le sous-comité des plaintes, si la plainte est fondée sur la sentence qui a été imposée, le recours pertinent consiste à en appeler de la sentence. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-045/03

La plaignante, victime d'une agression contre un membre de la famille, avait témoigné au procès. Elle a déclaré que le juge chargé de la conduite du procès ne devrait pas être affecté à des causes de violence familiale parce qu'il avait décrit l'agression qu'elle avait subie comme étant « trop anodine » pour justifier une période d'incarcération et qu'il a absous son ex-mari. La

DOSSIER N° 08-042/03

Le plaignant a été accusé de trois chefs d'agression sexuelle et d'entreposage négligent d'une arme à feu. Le plaignant a allégué que le juge, lors d'un ajournement, a dit que le plaignant « avait accepté bien des choses ». Le plaignant a allégué de plus que le juge avait déclaré qu'il « n'aimait pas la façon dont je défendais ma cause ». Le plaignant a aussi soutenu que le juge avait procédé à l'examen des chefs d'accusation avant l'instruction et qu'il avait ensuite présidé le procès, ce qui contrevenait clairement aux « règles ».

Après avoir examiné la plainte, le sous-comité des plaintes a demandé et examiné la transcription de l'instance d'ajournement au cours de laquelle les déclarations alléguées auraient été formulées. Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce que la transcription ne permettrait pas d'étayer les allé-gations du plaignant. Le sous-comité des plaintes a ajouté que le juge était courtois et respectueux et qu'il se demandait si le nouvel avocat du plaignant serait libre à la date du procès. De plus, le sous-comité des plaintes a noté qu'il ne pouvait y avoir de conflit en ce qui concerne le juge prési-dant le procès, car les comparutions précédentes ne faisaient pas partie de la phase précédant l'instruction, mais s'inscrivaient tout simplement dans la procédure d'établissement des dates. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

Le plaignant était l'intime dans une affaire de garde d'enfant et de droits de visite devant la

DOSSIER N° 08-044/03

Le sous-comité des plaintes était d'avis que la plainte devait être rejetée parce qu'elle ne relevait pas de la compétence du Conseil de la magistrature de l'Ontario, car elle concernait une décision rendue par le juge et ne s'appuyait pas sur une allé-gation d'inconduite judiciaire. Le sous-comité des plaintes a ajouté que le plaignant ne comprenait pas la nature d'une ordonnance ex parte dans une instance devant la Cour de la famille, les modalités de requête d'une telle ordonnance et les circonstances de même que les raisons pour lesquelles elle est rendue. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

Cour de la famille. Une ordonnance de garde provisoire de la fille du couple avait été rendue en faveur de l'ex-épouse du plaignant par suite du dépôt par cette dernière d'une requête ex parte devant le tribunal. Le plaignant a été informé que l'ordonnance avait été modifiée quelques semaines plus tard afin de l'autoriser à voir sa fille; par la suite, les parties ont réglé les problèmes concernant la garde de l'enfant. Cependant, le plaignant estimait que le juge n'aurait pas dû rendre l'ordonnance ex parte parce que, à son avis, elle était fondée sur des documents contenant des faussetés et des demi-vérités. Par conséquent, puisque le juge a rendu l'ordonnance à partir de cette information, le plaignant estime que le juge avait un préjugé contre lui. Le plaignant a aussi allégué que l'ordonnance ex parte le plaçait dans une situation défavorable dans le cadre des instances suivantes.

La plaignante, mère d'un homme de 52 ans reconnu coupable de voies de fait contre un

coupable de possession de pornographie infantile en vertu d'un chef d'accusation et de distribution de pornographie infantile en vertu de plusieurs chefs d'accusation. De nombreux citoyens ont été scandalisés par la décision du juge et ont envoyé des lettres de plainte à son sujet déclarant notamment qu'il était inapte à exercer ses fonctions, qu'il n'avait pas pris l'affaire au sérieux et qu'il n'avait pas tenu compte des déclarations de la victime soumises par le procureur de la Couronne.

Selon le sous-comité, le seul recours dans ce contexte d'insatisfaction concernant la sentence rendue par le juge était de porter la sentence en appel, ce que, apparemment, le ministère public a fait. Le sous-comité des plaintes a ajouté que les plaintes ne faisaient pas état d'inconduite judiciaire et qu'elles portaient sur la décision du juge. Le sous-comité des plaintes a recommandé que ces plaintes soient rejetées, car il a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire à l'égard des décisions rendues. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature de l'Ontario n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le sous-comité des plaintes a noté de plus que la sentence du juge avait de fait été portée en appel par le ministère public et que cet appel avait été rejeté par un tribunal de la Cour d'appel qui a statué que le juge de première instance n'avait pas erré en imposant la sentence. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte

devait être rejetée.

DOSSIER N° 08-041/03

Le plaignant était partie dans une affaire devant la Cour de la famille concernant la garde et la pension alimentaire de son enfant de même que le droit de visite. Le plaignant était en désaccord avec les décisions du juge président concernant le déroulement de l'instance; par exemple, la pension alimentaire n'a pas été acceptée. Le plaignant a ajouté qu'il ne voulait pas que ce juge intervienne de nouveau dans cette affaire concernant la famille.

Le sous-comité des plaintes a déclaré que la plainte porte sur les décisions prises par le juge et que ces dernières pourraient être annulées ou modifiées en appel si le juge avait erré. Selon le sous-comité des plaintes, la plainte doit être rejetée parce qu'elle ne relève pas de la compétence du Conseil de la magistrature de l'Ontario, que rien ne permet de prouver l'existence d'une inconduite judiciaire et que la lettre du plaignant ne contenait pas d'allégations d'inconduite judiciaire. De l'avis du sous-comité des plaintes, si le juge a commis des erreurs de droit, et le Conseil de la magistrature de l'Ontario n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être

jointe et à ses enfants. À la conclusion de l'audience, la juge présidente a rendu une ordonnance de versement de pension alimentaire aux enfants selon les lignes directrices et une ordonnance de versement de pension alimentaire à la conjointe. Le plaignant a déclaré qu'il avait fourni au juge des renseignements sur la situation financière de sa conjointe. Le plaignant a allégué que la juge n'en avait pas tenu compte pour rendre sa décision concernant le montant de la pension alimentaire devant être versé à la conjointe.

Le sous-comité des plaintes a déclaré que la plainte portait sur la décision de la juge à l'égard du montant de la pension alimentaire payable par le plaignant à sa conjointe, qu'elle ne contenait aucune allégation d'inconduite judiciaire et qu'elle portait uniquement sur la décision de la juge. Le sous-comité des plaintes a recommandé que cette plainte soit rejetée, car il a conclu qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont la juge avait exercé son pouvoir discrétionnaire dans la décision concernant la pension alimentaire payable à la conjointe. Si la juge a commis des erreurs de droit, et le Conseil de la magistrature de l'Ontario n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-040/03

Un juge a imposé une condamnation avec sursis, comprenant une assignation à domicile et une période de probation, à un homme reconnu

requêtes au tribunal. La plaignante a aussi affirmé que sa fille ne recevait pas les services médicaux dont elle avait besoin pendant qu'elle se trouvait sous la garde de son père et que ce dernier continuait à « défier la loi... avec le consentement du juge ». La plaignante a de plus allégué que le juge « participait avidement aux abus perpétrés » contre sa fille « en ne rendant pas la justice ».

Le sous-comité des plaintes a examiné la plainte et a demandé et examiné la transcription et la bande sonore de l'instance. Selon le sous-comité des plaintes, le juge président a fait preuve de sympathie à l'égard de la requête de la plaignante, qui n'était pas représentée par un avocat, et il l'a aidée. Le sous-comité des plaintes est d'avis que la plaignante est insatisfaite des décisions du juge. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il estimait qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire et que les décisions qu'il avait rendues relevaient de sa compétence. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-039/03

Le plaignant était partie dans une instance devant la Cour de la famille concernant le montant de la pension alimentaire payable à sa con-

plaintes, sans fondement. Selon le sous-comité, la plainte porte essentiellement sur l'insatisfac-
tion du plaignant à l'égard de la sentence
imposée au procès au criminel et de la négation
du droit de visite de son enfant dans la con-
férence préparatoire à l'audience ultérieure
devant la Cour de la famille. Le sous-comité a
souligné que les documents mentionnés dans le
cas de la conférence préparatoire à l'audience
devant la Cour de la famille ont un caractère
public et que le juge président en aurait eu con-
naissance, même s'il n'avait pas présidé le procès
au criminel. Le sous-comité des plaintes a aussi
noté qu'il n'est pas rare, dans de petites collectiv-
ités comme celle où habite le plaignant, que le
même juge instruit des affaires à la fois au crim-
inel et devant la Cour de la famille et que, pour
cette raison, il puisse à l'occasion voir les mêmes
parties dans les deux tribunaux. Le sous-comité
des plaintes a recommandé que la plainte soit
rejetée, car il estimait qu'il n'y avait pas de preuve
d'inconduite judiciaire de la part du juge à l'ap-
pui des allégations du plaignant. Le comité d'ex-
amen a souscrit à la recommandation du
sous-comité des plaintes selon laquelle la plainte
devait être rejetée.

DOSSIER N° 08-037/03

La plaignante était partie dans une instance
devant la Cour de la famille. La plaignante a
déclaré avoir perdu la garde de sa fille de 12 ans,
qui avait des besoins spéciaux et qu'elle avait
élevée seule, par suite d'une ordonnance du tri-
bunal fondée sur des « accusations de négli-
gence inventées de toutes pièces » formulées par
le père de l'enfant. La plaignante a aussi soutenu
qu'on lui avait refusé le droit de voir sa fille pen-
dant les deux années précédentes, malgré ses

l'audience devant la Cour de la famille en décem-
bre 2000. De plus, le plaignant a soutenu qu'à la
conférence préparatoire à la deuxième audience
devant la Cour de la famille en novembre 2002,
une déclaration sous serment contenant l'ordon-
nance de probation rendue en mars 2002 après
le procès au criminel avait été déposée. Selon le
plaignant, comme le juge était au fait de l'exis-
tence de l'ordonnance de probation, il a rendu
d'avance un jugement sur les questions soulevées
devant la Cour de la famille et a refusé au plaig-
nant le droit de voir son enfant.

Le sous-comité des plaintes a examiné la plainte
et a demandé et examiné la transcription de l'in-
stance au criminel. Le sous-comité des plaintes a
déclaré qu'aucune question ni aucun commen-
taire du juge présidant le procès au criminel
n'indiquait que ce dernier se souvenait de la
comparution du plaignant devant lui dans une
conférence préparatoire à une audience de la
Cour de la famille en décembre 2000. Selon le
sous-comité des plaintes, l'affaire au criminel a
été jugée selon les faits fournis par l'avocat du
plaignant sur un plaidoyer de culpabilité et les
observations de l'avocat du plaignant et du pro-
cureur de la Couronne sur la conclusion
souhaitée du procès. Le sous-comité des plaintes
a noté que la sentence imposée se situait à l'in-
térieur des limites suggérées à la fois par le pro-
cureur de la Couronne et par l'avocat de la
défense.

La plainte concernant la mention de l'ordon-
nance de probation dans la conférence prépara-
toire à l'audience devant la Cour de la famille en
novembre 2002 et l'allégation selon laquelle le
juge président avait déjà pris sa décision après
cette conférence est, de l'avis du sous-comité des

à l'enfance. Si la juge a commis des erreurs de droit, et le Conseil de la magistrature de l'Ontario n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le sous-comité des plaintes a aussi noté que le CMO n'avait pas le pouvoir de donner suite à la demande de la plaignante concernant le transfert du dossier dans un autre district judiciaire, ce dont la plaignante a été avisée dans la lettre accusant réception de sa plainte. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-036/03

Le plaignant était partie à deux instances devant la Cour de la famille et accusé dans une poursuite au criminel pour méfait et harcèlement. La première affaire devant la Cour de la famille a été jugée en décembre 2000, le procès au criminel a eu lieu en mars 2002 et la deuxième instance devant la Cour de la famille, en novembre 2002. Le plaignant a précisé que le même juge avait présidé les trois audiences. Le plaignant était contrarié du fait que le juge ayant participé à l'instance devant la Cour de la famille ait à statuer sur les accusations au criminel pesant contre lui et « se serve de l'information obtenue dans l'instance devant la Cour de la famille » contre lui. Le plaignant estime que la sentence imposée lors du procès au criminel en mars 2002 était excessive et que le juge président a formulé des commentaires ou posé des questions faisant croire au plaignant qu'il était influencé par des événements survenus à la conférence préparatoire à

Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il estimait qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire à l'égard des décisions concernant la garde ou le droit de visite. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-035/03

La plaignante est l'intimée dans une requête de protection d'un enfant présentée par la Société d'aide à l'enfance. La lettre de la plaignante commandait une liste de griefs, tous liés aux décisions rendues par la juge à l'audience. Selon la plaignante, ses droits ont été « gravement atteints » parce qu'elle avait l'impression que l'affaire devait être jugée selon les « règles du droit de la famille ». La plaignante voulait aussi que l'affaire soit jugée dans la municipalité où elle-même et sa fille vivaient.

Le sous-comité des plaintes a établi que la plainte ne comportait aucune allégation d'inconduite judiciaire, mais qu'elle concernait les décisions de la juge. Le sous-comité des plaintes a recommandé que cette plainte soit rejetée, car il estimait qu'il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont la juge avait exercé son pouvoir discrétionnaire à l'égard des décisions rendues sur la requête de la Société d'aide

decision parce que l'accusation ne figure pas dans mon dossier au CIPC » (Centre d'information de la police canadienne).

DOSSIER N° 08-034/02

La plaignante était l'intimée dans un différend prolongé concernant la garde des enfants et les droits de visite devant la Cour de la famille qui l'opposait à son ex-mari. La plaignante a déclaré qu'elle avait trouvé un emploi à plusieurs centaines de kilomètres de l'endroit où elle-même et son ex-mari vivaient. La plaignante a ajouté que son ex-mari avait demandé la garde provisoire de leur fille de dix ans devant la Cour de la famille de même qu'une ordonnance empêchant la plaignante d'emmener l'enfant avec elle lorsqu'elle déménagerait. La plaignante avait l'impression que le juge saisi de l'affaire avait pris des décisions préjudiciables pour sa famille et que ces décisions étaient fondées sur « toutes sortes d'accusations contre [elle]. fondées uniquement sur le oui-dire » que son ex-mari aurait formulées. La plaignante a admis qu'elle avait été « autorisée à répondre et à répliquer et mais que le juge, qui avait « beaucoup de parti pris » contre elle, avait accueilli la requête de garde provisoire du père et avait fixé une date ultérieure pour entendre les observations des parties et de l'avocat de l'enfant.

Le sous-comité des plaintes était d'avis que cette question ne relevait pas de la compétence du Conseil de la magistrature de l'Ontario, car elle concernait un jugement avec lequel la plaignante n'était pas d'accord et que rien ne permettait de justifier une allégation d'inconduite judiciaire.

du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-033/02

La plaignante s'est retrouvée en cour parce qu'elle avait été accusée d'agression envers son conjoint de fait qui, selon ses allégations, l'avait aussi agressée. La plaignante n'était pas représentée par un avocat à son procès. Elle s'est plainte du fait que son « ex-conjoint de fait » a témoigné contre elle et que « l'accusation d'agression a été maintenue par le tribunal, même si je n'étais pas coupable, et qu'il [son conjoint de fait] a été jugé innocent ». La plaignante a allégué qu'elle n'avait pas eu droit à un procès équitable et qu'elle avait fait l'objet de discrimination à cause de son sexe.

Le sous-comité des plaintes, après avoir examiné la plainte, a conclu qu'il n'y a pas de preuve d'inconduite judiciaire dans la façon dont le juge a exercé son pouvoir discrétionnaire concernant la décision de surseoir à l'accusation au criminel contre la plaignante. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, elles ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du comité des plaintes selon laquelle la plainte devait être rejetée. Après avoir été informée que sa plainte avait été rejetée par le Conseil de la magistrature, elle a rédigé une lettre dans laquelle elle reconnaît maintenant que la décision du juge de surseoir à l'accusation d'agression qui pesait contre elle « était une bonne

DOSSIER N° 08-032/02

Le plaignant a écrit au CMO pour l'informer qu'il avait été accusé d'attentat à la pudeur, puis été jugé et reconnu coupable d'un crime qu'il n'a pas commis. Le plaignant a soutenu « qu'il avait été condamné par les actions d'un juge, d'un procureur de la Couronne et de son propre avocat qui ont fait le procès selon des éléments de preuve falsifiés et une preuve falsifiée par omission ». Le plaignant a aussi fait de nombreuses allégations contre son avocat, le procureur de la Couronne, la police et le juge de première instance en ce qui concerne une condamnation pour voies de fait sur un agent de la paix et d'autres affaires complètement différentes remontant à plusieurs années. Le plaignant a allégué que le juge l'avait injustement déclaré coupable d'attentat à la pudeur, en violation de la Charte des droits.

Après avoir examiné la plainte et les documents à l'appui de cette dernière, le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il n'y avait pas, dans la plainte, d'allégation de pratique judiciaire répréhensible, mais uniquement insatisfaction du plaignant à l'égard de la décision du juge. Selon le sous-comité des plaintes, il n'y a pas de preuve d'inconduite judiciaire dans la façon dont le juge a exercé son pouvoir discrétionnaire concernant l'examen des faits et de la preuve qui lui ont été soumis et les décisions qu'il a prises relevaient de sa compétence. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien trouvé à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, elles ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation

de l'affaire avait été dur et impoli, qu'il avait refusé d'écouter les bandes sonores déposées en preuve par le plaignant et qu'il avait retiré des éléments de preuve du dossier du tribunal.

Le plaignant a fourni une copie des plaidoiries et des extraits des éléments de preuve fournis à l'appui de sa requête de droit de visite élargi. Le sous-comité des plaintes a demandé et examiné la transcription de l'instance. Selon le sous-comité des plaintes, tous les documents montrant qu'en fait les problèmes du plaignant avaient rapport non pas avec le juge, mais avec tout ce qui s'est passé dans ses relations familiales. Le sous-comité des plaintes a établi que le juge en question avait fait preuve de patience, de courtoisie et d'empathie à l'égard du plaignant, qu'il l'avait non seulement écouté, mais qu'il avait aussi pris en compte toute la preuve et qu'il n'avait pas retiré d'éléments de preuve du dossier du tribunal, contrairement aux allégations du plaignant. De plus, le sous-comité des plaintes a établi que, même si le plaignant s'était parfois représenté lui-même au cours de ce long procès, les documents confirmaient le fait que le juge avait fait preuve de souplesse et d'équité à l'égard du plaignant tout au long de l'instance.

Le sous-comité des plaintes estime que le plaignant est insatisfait de la décision du juge concernant les droits de visite et il semble, d'après les documents fournis, que le plaignant n'obtiendra jamais satisfaction du système judiciaire. Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce que, à son avis, il n'existe pas de preuve d'inconduite judiciaire de la part du juge. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

Le sous-comité des plaintes a demandé et examiné la transcription et la bande sonore de l'instance. Selon le sous-comité des plaintes, le juge n'a pas formulé les commentaires que le plaig-nant lui attribue. Le sous-comité des plaintes a aussi noté que le juge avait parfois élevé la voix, mais que, à son avis, il n'y avait pas la conduite judiciaire. Par conséquent, le sous-comité des plaintes a recommandé que la plainte soit rejetée. Le comité d'examen a souscrit à la recommanda-tion du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-023/02

La plaignante, accusée de conduite imprudente, a déclaré qu'elle avait été empêchée d'intervenir pour sa propre défense lors de son procès en août 1995. Elle a souligné que « les membres de la famille de la personne décédée ont été très bruyants pendant le procès » et qu'elle avait reçu une « sentence sévère ». La plaignante a ajouté que son incarcération avait été désagréable et qu'elle avait subi des traitements humiliants en prison.

Le sous-comité des plaintes a examiné la plainte et a demandé la transcription de l'instance. Selon la Division des services aux tribunaux, étant donné le temps écoulé depuis le procès (sept ans), il était impossible de retrouver la transcrip-tion, car les dossiers n'avaient pas été conservés. La plaignante a été informée qu'il n'existait pas de transcription du procès et on lui a demandé plus de renseignements au sujet de sa plainte. Le sous-comité des plaintes a attendu six mois une réponse à sa demande de renseignements supplémentaires avant de faire rapport au comité de révision.

Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il a été impossible de trouver une preuve objective corroborant les allé-gations de la plaignante selon lesquelles elle n'avait pas été autorisée à intervenir au procès. Le sous-comité des plaintes a noté que la plaig-nante, dans sa lettre, mentionnait avoir été représentée par un avocat. Le sous-comité des plaintes était d'avis que la sévérité de la sentence relevait d'une procédure d'appel et non de la compétence du CMO. De la même façon, le sous-comité des plaintes a déclaré que les condi-tions de détention difficiles de la plaignante ne relèvent pas non plus de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

DOSSIER N° 08-029/02

Le plaignant, grand-père maternel d'un garçon de neuf ans, s'est présentée en cour afin d'obtenir le droit de rencontrer plus souvent son petit-fils. La fille du plaignant (mère de l'enfant) souffre de psychose et est incapable de s'occuper de son fils. Le père de l'enfant, qui avait obtenu la garde de l'enfant au moment de la séparation des parents, a subi un AVC débilisant et a été incapable par la suite de s'occuper de son enfant. Par conséquent, son frère, oncle de l'enfant, a obtenu la garde de ce dernier. Selon le sous-comité des plaintes, il ressort clairement des lettres du plaignant que ce dernier méprise cet homme. La requête du plaig-nant en vue d'obtenir un accès accru et non supervisé à son petit-fils a débouché sur un procès de 19 jours étalés sur près de trois ans. Au bout du compte, la requête du plaignant a été rejetée. Le plaignant a soutenu que le juge saisi

DOSSIER N° 08-010/02

Le plaignant a allégué que le juge qui présidait son procès devant la Cour de la famille était partial et avait des préjugés parce qu'il s'est appuyé sur l'avis d'un avocat du Bureau des obligations familiales (BOF). Le plaignant a de plus allégué que le juge a refusé de lui donner la parole pendant l'audience parce qu'il n'était pas représenté par un avocat.

Le sous-comité des plaintes a examiné la plainte et a demandé et obtenu une copie de la transcription de l'instance. Le sous-comité des plaintes a déclaré que l'avocat représentant le BOF avait présenté au tribunal un exposé sur le contexte et la nature de l'affaire avant que la preuve soit soumise. Le sous-comité des plaintes a déclaré que ces mesures avaient été prises afin d'aider à la fois le juge et le plaignant, de façon que tout le monde comprenne clairement l'objet de l'audience.

Le sous-comité des plaintes a ajouté que l'avocat du BOF a offert une seule fois ce que l'on pourrait appeler des « conseils » au tribunal, à la conclusion de l'audience, au moment où le juge élaborait un tableau de remboursement des arriérés et où l'avocat du Bureau a aidé le tribunal à comprendre les ordonnances déjà en vigueur. Le sous-comité des plaintes a souligné que le juge avait expliqué au plaignant que ces conseils avaient été utiles pour lui, car ils visaient à lui éviter l'incarcération à perpétuité en cas de non-paiement des arriérés.

Le sous-comité des plaintes a aussi noté que la transcription révélait que le juge avait donné au plaignant l'occasion de présenter ses preuves et

DOSSIER N° 08-015/02

Le plaignant est un représentant qui a comparu pour le compte de son client dans une affaire devant la Cour des petites créances. Selon le plaignant, le juge lui aurait demandé de façon condescendante de s'asseoir et aurait ajouté que « en vingt et un ans, il [le juge] n'avait jamais vu quelqu'un d'aussi incompetent ». Selon le plaignant, le juge n'était pas impartial au moment où il a rendu son jugement et « criait et lançait constamment des propos diffamatoires ». Le plaignant estime que les intérêts de son client ont été desservis par l'animosité alléguée du juge contre lui.

Le sous-comité des plaintes selon laquelle la plainte devait être rejetée.

Selon le sous-comité des plaintes, le juge a fait preuve de patience à l'égard du plaignant et a essayé de l'aider; la transcription ne confirme pas les allégations selon lesquelles le plaignant n'a pas été autorisé à parler et n'indique pas non plus de parti pris ni de préjugés de la part du juge en question. Le sous-comité des plaintes a recommandé que la plainte soit rejetée. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

d'expliquer ses réponses aux questions en conférence-interrogatoire, même si les réponses étaient souvent verbuses et hors de propos. Selon le sous-comité des plaintes, le juge a expliqué au plaignant les points qu'il devait aborder dans son plaidoyer final, l'a autorisé à présenter sa position finale, est intervenu uniquement pour aider le plaignant à maintenir le cap pendant son plaidoyer, puis a donné au plaignant l'occasion de répliquer.

le contexte dans lequel s'inscrivaient les remarques et de revoir sa décision d'ordonner une audience à propos de l'affaire.

Après écoute de la bande sonore, les membres du comité d'examen ont conclu que les commentaires étaient sans gravité et qu'ils ne méritaient pas qu'on s'y attarde. L'examen du contenu de la bande sonore a permis d'établir que les remarques ou les directives du juge à l'intention du sténographe judiciaire ont été formulées par le juge après la fin de l'audience et le départ des parties. Ses remarques ont plutôt été considérées comme une blague faite après la fin de l'audience et ne constituaient pas vraiment des directives ordonnant au sténographe judiciaire d'effacer une partie du dossier du tribunal. Selon le comité d'examen, le sténographe judiciaire qui a effectué la transcription a estimé que ces remarques ou directives n'appartenaient pas au dossier de l'instance et, par conséquent, il a décidé de ne pas les transcrire. Le comité d'examen a confirmé que la conduite du juge pendant le procès et à l'égard des allégations du plaignant ne constituait pas une inconduite judiciaire. Le comité d'examen a rejeté la plainte.

DOSSIER N° 08-008/02

La plaignante a comparu avec un représentant afin de présenter certaines motions dans le cadre d'une instance devant la Cour des petites créances. Lorsque le représentant légal de la plaignante a été incapable de répondre aux questions du juge à l'égard de l'une des motions, la plaignante aurait répondu à la place de son représentant. La plaignante allègue que, au moment où elle a répondu, le juge s'est « emporté

de façon excessive » et qu'il a adopté une attitude inconvenante et irrespectueuse à son égard. La plaignante allègue aussi que le juge a menacé d'appeler les agents de sécurité si elle ne quittait pas la salle d'audience. La plaignante demande au Conseil de la magistrature de « rétablir la justice » pour éviter que le juge adopte de nouveau ce type de comportement. Elle demande aussi au Conseil son avis sur la pertinence de poursuivre le juge en question pour discrimination, harcèlement et préjudice.

Le sous-comité des plaintes a demandé et examiné la transcription et la bande sonore de l'audience. Selon le sous-comité des plaintes, le juge président avait parfois tendance à s'imposer, mais son comportement n'était pas déplacé et ne constituait pas une inconduite judiciaire. Le comité d'examen a demandé au sous-comité de faire une enquête plus approfondie au sujet de la plainte. Le sous-comité des plaintes a demandé au juge de répondre aux allégations. Dans sa réponse au sous-comité des plaintes, le juge disait se souvenir uniquement du fait que la plaignante était « une femme très en colère et très agressive qui coupait la parole aux autres et faisait beaucoup de bruit »; de plus, selon le juge, elle est revenue plus tard dans la salle d'audience et a interpellé le juge en criant à partir du fond de la salle. Le sous-comité des plaintes a aussi recommandé le rejet de la plainte parce que, à son avis, le comportement du juge n'était pas déplacé et ne constituait pas une inconduite judiciaire. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte devait être rejetée.

Effacez cela pour moi. » Les directives du juge, soit « Effacez cela », n'ont pas été transcrites par le sténographe judiciaire et il semble que le compte rendu ait été modifié conformément aux directives du juge, le sous-comité des plaintes a donc recommandé que cette plainte soit renvoyée au juge en chef.

Le comité d'examen, en examinant la recommandation du sous-comité des plaintes, a convenu que l'échange entre le juge et le plaignant ne constituait pas en soi une inconduite judiciaire. Cependant, le comité d'examen a estimé que les directives du juge au sténographe judiciaire visant à modifier le dossier du tribunal étaient extrêmement graves. Le comité d'examen n'a pas accepté la recommandation du sous-comité des plaintes et a ordonné que le Conseil de la magistrature tienne une audience pour approfondir l'affaire.

En se préparant à aviser le juge en question de la décision du comité d'examen d'ordonner une audience au sujet de l'affaire, le greffier a noté que l'on n'avait pas demandé au juge de s'expliquer au sujet de l'inconduite alléguée, soit d'avoir ordonné au sténographe judiciaire de modifier le dossier du tribunal, car cette alléguation ne faisait pas partie de la plainte reçue et que, par conséquent, le juge n'en avait pas été informé. L'examen de la bande sonore par le greffier a aussi permis de déterminer que les commentaires formulés par le juge au sténographe judiciaire s'inscrivaient dans un contexte et dans un cadre judiciaire qui diminueraient considérablement la gravité de la remarque. Le greffier, après avoir consulté le juge en chef, a décidé que le comité d'examen devait avoir l'occasion d'écouter la bande sonore afin d'examiner

Le juge en chef a rencontré le juge afin d'aborder ces questions et en a fait rapport au comité d'examen. Dans son rapport, le juge en chef a souligné avec satisfaction que le juge avait reconnu que ses remarques et ses comportements étaient déplacés et inacceptables et qu'il les regrettait sincèrement. Le juge en chef a recommandé que l'affaire soit classée. Les membres du comité d'examen se sont déclarés satisfaits du rapport du juge et ont souscrit à la recommandation de classer l'affaire.

DOSSIER N° 07-050/02

Le plaignant a comparu, sans avocat, devant le juge visé à la Cour de la famille. Le plaignant a allégué que le juge visé s'est adressé à lui en criant et l'a traité de façon inconvenante pendant l'audience. Le plaignant était au tribunal pour répondre à une requête d'ordonnance restrictive déposée par son épouse.

Le sous-comité des plaintes a examiné la plainte et a demandé et reçu une copie de la transcription et de la bande sonore de l'instance. De plus, le sous-comité a demandé au juge de répondre aux allégations contenues dans la lettre de plainte. Le juge a déclaré ne pas se souvenir de l'incident ou du plaignant en question et a suggéré au sous-comité d'utiliser la transcription pour avoir un compte rendu du procès. Le sous-comité des plaintes a écouté la bande sonore, a lu la transcription et a fait savoir au comité d'examen que le juge avait haussé le ton lorsqu'il parlait au plaignant mais, à son avis, il avait raison d'agir ainsi afin de se faire entendre malgré les cris du plaignant. Le sous-comité des plaintes a déclaré être plus préoccupé par les directives du juge à l'intention du sténographe judiciaire : «

DOSSIER N° 07-035/02

Le plaignant était l'intimé dans un dossier de requête en augmentation de pension alimentaire présentée par son épouse. Le plaignant a soutenu que le juge qui avait entendu sa requête avait pris parti en faveur de son épouse en raison de ses idées préconçues au sujet de l'emploi du plaignant et du fait qu'il avait formulé dans la salle d'audience des commentaires « dépourvus de professionnalisme » et « très inconvenants » concernant l'emploi du plaignant.

Le sous-comité des plaintes a demandé et examiné la transcription de l'instance et a par la suite demandé au juge en question de répondre aux plaintes concernant les commentaires qu'il avait formulés en cour relativement à l'emploi du plaignant. Le juge en question a répondu à la plainte et s'est excusé sans détour d'avoir formulé ces commentaires déplacés en cour et a reconnu que les termes choisis étaient « inacceptables ». Le sous-comité des plaintes a recommandé que la plainte soit renvoyée au juge en chef afin que ce dernier s'entretienne avec le juge en question à ce sujet. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes. Le juge en chef a rencontré le juge afin de discuter de la plainte et en a fait rapport au comité d'examen.

Dans son rapport, le juge en chef a noté avec satisfaction que le juge avait reconnu que ses remarques étaient déplacées et que manifestement il les regrettait. À la demande du juge en chef, le juge a rédigé une lettre d'excuses qui a été soumise au comité d'examen. Les membres du comité d'examen ont accepté le rapport du juge en chef de même que la recommandation suggérant que l'affaire soit close. Le comité d'examen a de plus accepté que le conseil envoie au plaignant une

ses remarques.

DOSSIERS NOS 07-047/02 ET 07-048/02

Dans cette affaire, un jeune contrevenant a comparu pour faire face à une accusation de vol. Il y a deux plaintes distinctes (une du père de l'un des accusés et l'autre d'un ami de la famille qui était présent au tribunal avec le père). Les deux plaignants ont soutenu que le juge de première instance avait formulé des commentaires inconvenants, mesquins et méprisants au sujet des parents du jeune contrevenant pendant l'instance.

Le sous-comité des plaintes a demandé et examiné la transcription de l'instance et déclaré que le juge avait effectivement formulé les commentaires décrits dans les lettres de plaintes reçues. Le sous-comité des plaintes a souligné que le juge s'était excusé au cours de l'audience d'avoir traité d'« ivrognes » les parents du contrevenant dès le moment où l'avocat du jeune contrevenant s'est opposé à l'utilisation de ce terme. Le sous-comité des plaintes a aussi noté que l'avocat du jeune contrevenant avait soumis à l'attention du juge un rapport présentiel. Le sous-comité des plaintes a souligné que, selon le rapport présentiel, les parents du jeune contrevenant faisaient l'objet de l'accusation étaient sobres depuis dix ans. Le sous-comité des plaintes a recommandé que ces plaintes, de même que les plaintes figurant dans le dossier 07-027/01 de la CMO, soient transmises au juge en chef afin qu'il en discute avec le juge. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes.

ment et par écrit, de remettre au Conseil de la magistrature de l'Ontario la date, l'heure et l'endroit précis de sa comparution afin que l'on puisse se procurer une transcription de l'audience. Le sous-comité des plaintes a déclaré que l'information demandée n'a pas été fournie et que, par conséquent, une enquête n'avait pu être effectuée. Le comité d'examen a convenu avec le sous-comité que la plainte devait être rejetée, mais que le dossier pouvait être réactive si le plaignant fournissait l'information demandée. Le sous-comité des plaintes a par la suite fait savoir qu'il avait obtenu l'information demandée et qu'il avait été en mesure de demander une transcription de l'audience et d'en prendre connaissance. Le sous-comité des plaintes a déclaré que le plaignant n'était pas représenté par un avocat à l'audience et que, par conséquent, la juge lui a laissé toute la latitude voulue pour interroger et contre-interroger les témoins et l'a aidé à présenter sa preuve. Le sous-comité des plaintes était d'avis que la plainte devait être rejetée, car l'audience s'était déroulée de façon équitable et que le plaignant avait eu amplement le temps et l'occasion de présenter ses arguments. Le sous-comité des plaintes a établi qu'il n'y avait pas eu d'inconduite judiciaire de la part de la juge dans le cadre des décisions qu'elle a rendues dans cette affaire et que, par conséquent, la plainte ne relevait pas de la compétence du Conseil de la magistrature de l'Ontario. Le sous-comité des plaintes a signalé par la suite que le plaignant avait depuis demandé par écrit au Conseil de la magistrature de l'Ontario que la plainte soit retirée. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle la plainte doit être rejetée.

fait d'avoir formulé certains des commentaires soumis à son attention.

Après avoir examiné l'ensemble des documents qui lui ont été soumis, de même que la réponse du juge, le sous-comité des plaintes a recommandé que cette affaire de même que deux autres plaintes semblables soient renvoyées au juge en chef de la Cour de l'Ontario (dossiers nos 07-047/02 et 07-048/02). Le comité d'examen a accepté la recommandation du sous-comité des plaintes. Le juge en chef a rencontré le juge afin d'examiner avec lui les griefs des plaignants et en a ensuite fait rapport au comité d'examen. Dans son rapport, le juge en chef a souligné avec satisfaction que le juge avait reconnu le caractère inapproprié et inacceptable de ses remarques et de son comportement et qu'il regretterait sincèrement ses actions. Le juge en chef a recommandé que l'affaire soit classée. Les membres du comité d'examen ont déclaré être satisfaits du rapport du juge en chef et ont accepté la recommandation de classer l'affaire.

DOSSIER N° 07-034/01

Le plaignant a informé le CMO qu'il s'était présenté en cour en 1998 et que la juge présidente lui avait refusé une autorisation d'acquisition d'armes à feu (AAAF). Le plaignant a soutenu que la juge avait « biaisé » son dossier en ne l'autorisant pas à se présenter comme « une personne ayant une formation d'agent de conservation », ce qui, de l'avis du plaignant, était un élément important. Depuis sa comparution en 1998, le plaignant a déclaré qu'il avait écrit au gouverneur général, au ministre de la Justice, au premier ministre et à la Reine au sujet de sa plainte. On a demandé au plaignant, orale-

DOSSIER N° 06-054/00

La plaignante, qui représentait la défenderesse dans une affaire devant la Cour des petites créances, a allégué que le juge président avait eu

à son égard un comportement offensant. Elle a soutenu de plus qu'il avait élevé la voix et qu'elle s'était sentie humiliée à cause de son accent. La plaignante a déclaré qu'elle s'était déjà rendue en cour pour des affaires semblables dans le cadre de ses activités professionnelles et qu'elle est « habitué à la façon dont certains juges peuvent s'impliquer à l'égard des parties ». Cependant, la plaignante a allégué que l'expérience vécue sortait de l'ordinaire et elle a ajouté avoir été « bouleversée et démoralisée par la façon dont [le juge]... m'a humiliée devant les personnes présentes ».

Le sous-comité des plaintes a examiné la transcription et la bande sonore de l'instance et a demandé une réponse au juge. Ce dernier, dans sa réponse, a déclaré être incapable de se rappeler l'affaire et de formuler des commentaires parce que l'instance s'était déroulée presque deux ans auparavant. Cependant, le sous-comité des plaintes a mentionné que le juge avait déclaré qu'il n'était pas dans l'intention du tribunal d'intimider, de rabaisser ou d'humilier toute partie qui se présentait devant lui et que, s'il avait donné cette impression, il s'en excusait sincèrement.

Selon le sous-comité des plaintes, la plainte doit être rejetée parce que rien ne prouve les allégations de la plaignante selon lesquelles elle a été humiliée à cause de son accent. Le sous-comité des plaintes a aussi ajouté que, même si le juge parlait parfois à voix haute et que le ton de sa voix laissait parfois percevoir du mécontentement, le comportement du juge ne constituait pas une

DOSSIER N° 07-027/01

Le plaignant, un avocat qui déclare avoir comparu à de nombreuses reprises devant le juge faisant l'objet de la plainte, soutient qu'« il n'est pas du tout inhabituel que [le juge] s'empare et soit impoli envers les procureurs, le personnel, les accusés, les agents de police et les témoins ». Le plaignant précise dans sa plainte que les avocats « craignent constamment de nuire aux intérêts de leurs clients qui se présentent devant le juge à pareille date et les répercussions que cela pourrait avoir plus tard ».

Selon le plaignant, le comportement du juge « souille le caractère sacré de la salle d'audience. Il détruit l'apparence de justice. Il ébranle la confiance du public à l'égard de notre système judiciaire. » Le plaignant a soumis au Conseil pour examen les copies de nombreuses transcriptions et il a été appuyé par un autre avocat qui a aussi envoyé plusieurs transcriptions comme exemples du comportement faisant l'objet de la plainte.

Le sous-comité des plaintes a examiné tous les documents fournis et a demandé au juge une réponse à l'égard des plaintes. L'avocat du juge a reconnu que, à l'occasion, les remarques du juge ont pu manquer de tact et qu'il a pu s'exprimer avec emportement, parfois de façon acerbe. Le procureur du juge a aussi reconnu que ce dernier utilisait parfois un langage coloré mais que, ce faisant, il n'avait pas l'intention d'être désobligeant ou de blesser les gens et que le juge regrette-



On trouvera ci-après une description détaillée de chaque plainte. Les renseignements signalétiques ont été supprimés.

Chaque dossier reçoit un numéro constitué d'un préfixe de deux chiffres indiquant l'année d'activités du Conseil au cours de laquelle il a été ouvert. Ce préfixe est suivi d'un numéro de dossier séquentiel et d'un nombre de deux chiffres indiquant l'année civile au cours de laquelle le dossier a été ouvert (par exemple, n° 09-014/03 était le 14e dossier ouvert au cours de la neuvième année d'activités et il a été ouvert au cours de l'année civile 2003).

Dans tous les dossiers classés durant l'année, l'avis de la décision du Conseil de la magistrature, motifs à l'appui, a été remis au plaignant et au juge visé, conformément aux instructions du juge sur l'avis (se reporter à la page B-26 de l'annexe B du Guide des procédures du CMO).

9. Résumés des dossiers

ANNÉE D'ACTIVITÉS	Ouverts durant l'exercice	Reportés de l'exercice précédent	Total des dossiers ouverts durant l'exercice	Classés durant l'exercice	En instance à la fin de l'exercice
99/00	59	59	118	66	52
00/01	55	52	107	63	44
01/02	52	44	96	63	33
02/03	49	33	82	48	34
03/04	55	34	89	54	35

8. Résumé des plaintes

À la fin de sa neuvième année d'activités, le Conseil de la magistrature de l'Ontario a reçu 55 plaintes, en plus des 34 dossiers de plaintes reportés des années précédentes. Sur ces 89 plaintes, 54 ont été réglées avant le 31 mars 2004, ce qui laisse 35 dossiers de plaintes qui seront reportés à la dixième année d'activités.

Cinq (5) des 35 dossiers de plaintes reportés à la dixième année comportaient un renvoi de la plainte au juge en chef de la Cour de justice de l'Ontario, Brian W. Lennox, ou à la juge en chef de la Cour supérieure de justice, Heather Smith. Le délai nécessaire pour que le juge ou la juge en chef concerné rencontre le juge et présente son rapport au comité d'examen s'est prolongé au-delà du 31 mars 2004. Sept (7) des dossiers de plaintes ont été reportés en raison de retards inévitables attribuables à des étapes qui se sont ajoutées au processus d'enquête (par exemple, certains plaignants ont beaucoup tardé à répondre à des demandes de renseignements supplémentaires). En outre, le temps a manqué avant la tenue de la dernière réunion du Conseil de la neuvième année pour terminer l'enquête relative aux 19 dossiers ouverts vers la fin de la neuvième année. Les deux derniers dossiers reportés à la dixième année ont été ouverts durant la huitième année, puis reportés à la neuvième année et reportés de nouveau à la dixième année. Ces deux dossiers ont fait l'objet d'une ordonnance d'audience publique, mais il a été impossible de fixer des dates d'audience pendant la neuvième année. Ces deux dossiers de plaintes seront reportés à la dixième année.

Dans tous les cas une enquête a été menée. Le sous-comité des plaintes a examiné la lettre du plaignant et, au besoin, la transcription ou la bande sonore de l'instance judiciaire pour rendre une décision concernant la plainte. Dans certains cas justifiés, une enquête plus poussée a été menée. Dans tous les cas, les quatre membres de chaque comité d'examen ont approuvé la décision relative à la plainte, telle que recommandée par le sous-comité des plaintes, après avoir examiné le dossier de la plainte et les résultats de l'enquête.

Cinquante (50) des 54 dossiers de plaintes réglés ont été rejetés par le Conseil de la magistrature.

Dix-sept (17) des 50 dossiers de plaintes rejetés par le Conseil de la magistrature de l'Ontario au cours de la période couverte par le présent rapport étaient hors du champ de compétence du Conseil. Ces dossiers concernaient généralement un plaignant ayant exprimé son insatisfaction à l'égard du résultat d'un procès ou de la décision d'un juge, sans toutefois formuler une allévation d'inconduite. Dans ces cas, bien que les décisions rendues par le juge puissent faire l'objet d'un appel, l'absence d'allévation d'inconduite signifiait que les plaintes étaient hors du champ de compétence du Conseil de la magistrature.

Des 50 dossiers de plaintes rejetés par le CMO, 33 présentaient des allégations de comportement inapproprié, comme une attitude grossière ou agressive, un manque d'impartialité, un conflit d'intérêt ou toute autre forme de parti pris. Un sous-comité des plaintes a enquêté sur les allégations figurant dans chacun de ces dossiers et a jugé que celles-ci étaient non fondées.

Les quatre autres dossiers de plaintes classés durant la neuvième année d'activités ont été renvoyés au juge en chef de la Cour de justice de l'Ontario, Brian W. Lennox, afin qu'il s'entretienne avec le juge concerné (dossiers nos 07-027/01, 07-035/02, 07-047/02 et 07-048/02).

Les membres du sous-comité des plaintes qui ont participé à la sélection préalable de la plainte ne participent pas à son examen par le Conseil ni à aucune audience subséquente portant sur cette plainte. De la même façon, les membres du comité d'examen qui ont participé à l'audition d'une plainte ou à son renvoi ne participent pas à l'audition de la plainte, au cas où une audience est ordonnée.

À la fin du processus d'enquête et d'examen, toutes les décisions relatives aux plaintes soumises au Conseil de la magistrature auront été examinées par un total de six membres du Conseil : deux membres du sous-comité des plaintes et quatre membres du comité d'examen.

Des dispositions relatives à la nomination de membres temporaires ont été prises pour veiller à ce qu'une majorité des membres du Conseil puissent tenir une audience sur une plainte si une telle audience a été ordonnée. Les comités d'audience doivent être composés d'au moins deux des six autres membres du Conseil qui n'ont pas participé au processus jusqu'à cette étape. Au moins un membre du comité d'audience doit être non juriste, et le juge en chef de la Cour de justice de l'Ontario, ou son suppléant de la Cour d'appel, doit présider le comité d'audience.

Les audiences tenues relativement à des plaintes sont publiques à moins que le Conseil ne détermine, conformément aux critères établis en vertu de l'alinéa 51.1(1) de la Loi sur les tribunaux judiciaires, que des circonstances exceptionnelles existent et que les avantages du maintien du caractère confidentiel prévalent sur ceux de la tenue d'une audience publique, auquel cas le Conseil peut tenir une partie ou la totalité de l'audience à huis clos.

Il n'est pas obligatoire que les instances autres que les audiences tenues pour examiner les plaintes portées contre certains juges soient publiques. L'identité d'un juge, après une audience à huis clos, n'est divulguée que dans des circonstances exceptionnelles déterminées par le Conseil. Dans certaines circonstances, le Conseil est aussi habilité à interdire la publication de renseignements susceptibles de divulguer l'identité d'un plaignant ou d'un juge. La Loi sur l'exercice des compétences légales, sauf certaines exceptions, s'applique aux audiences tenues relativement à des plaintes.

Après la tenue d'une audience, le comité d'audience du Conseil peut rejeter la plainte (qu'il ait conclu ou non que

Le Conseil de la magistrature peut imposer les sanctions

La plainte n'est pas fondée) ou, s'il conclut qu'il y a eu inconduite de la part d'un juge, il peut imposer une ou plusieurs sanctions, ou recommander au procureur général la destitution du juge.

◆ donner un avertissement au juge;

◆ réprimander le juge;

◆ ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;

◆ ordonner que le juge prenne des dispositions précises, par exemple, suivre une formation ou un traitement, pour pouvoir continuer de siéger à titre de juge;

◆ suspendre le juge, avec rémunération, pour une période indéterminée;

◆ suspendre le juge, sans rémunération, mais avec avantages sociaux, pendant une période maximale de trente jours;

(Remarque : le Conseil peut imposer toute combinaison des sanctions énoncées ci-dessus.)

◆ recommander au procureur général la destitution du juge.

(Remarque : cette dernière sanction ne peut être combinée avec aucune autre.)

Le comité d'examen ou un comité d'audience peut, lorsqu'une audience est tenue relativement à une plainte, examiner la question de l'indemnisation du juge pour les frais qu'il a engagés au titre des services juridiques nécessaires à une enquête ou à une audience. Le Conseil peut ordonner l'indemnisation du juge pour le coût de ces services juridiques (en se fondant sur un tarif qui ne dépasse pas le taux maximal normalement payé par le gouvernement de l'Ontario pour des services similaires) et le procureur général doit verser l'indemnité au juge si cette mesure est recommandée.

On trouvera à l'annexe D du présent rapport une copie des dispositions législatives de la Loi sur les tribunaux judiciaires concernant le Conseil de la magistrature de l'Ontario.

4. Plan de formation

Le juge en chef de la Cour de justice de l'Ontario est tenu, en vertu du paragraphe 51.10 de la Loi sur les tribunaux judiciaires, de mettre en œuvre et de rendre public le plan de formation judiciaire continue des juges provinciaux. Ce plan de formation doit être approuvé par le Conseil de la magistrature comme il est prévu à l'alinéa 51.10 (1) de la loi. Au cours de la période couverte par le présent rapport annuel, un plan de formation continue a été élaboré par le juge en chef, en collaboration avec le secrétariat à la formation, et approuvé par le Conseil de la magistrature. On trouvera à l'annexe C une copie du plan de formation continue pour 2003-2004.

5. Communications

Le site Web du Conseil de la magistrature de l'Ontario continue de fournir de l'information sur le Conseil ainsi que des renseignements sur les audiences à venir. Une copie des motifs des jugements est affichée sur le site Web des que ceux-ci sont rendus publics tout comme le plus récent rapport annuel accessible au public est présenté dans sa version intégrale.

L'adresse du site Web du CMO est : www.ontariocourts.on.ca/

6. Comité consultatif sur les nominations à la magistrature

Depuis la promulgation des modifications à la Loi sur les tribunaux judiciaires en février 1995, le Conseil de la magistrature ne s'occupe plus directement de la nomination des juges provinciaux. Toutefois, le Conseil est représenté par l'un de ses membres au Comité consultatif sur les nominations à la magistrature (CCNM) à l'échelle provinciale. Madame la juge Marjoh Agro a été nommée par le CMO pour le représenter au sein du CCNM.

7. Procédure d'instruction des plaintes

Un sous-comité des plaintes, formé de membres du Conseil de la magistrature et qui comprend toujours un officier de justice nommé par l'autorité provinciale (un juge autre que le juge en chef de la Cour de justice de

Membres de la collectivité :

PAUL HAMMOND (Bracebridge)
Président et directeur général, Muskoka Transport Ltd. .

WILLIAM JAMES (Toronto)
Président, Inmet Mining Corporation

HENRY WETELAINEN (Wabigoon)
Ontario Metis Aboriginal Association

JOCELYNE COTÉ-O'HARA (Toronto)
(à compter du 28 mai 2003)
Présidente, groupe CORA

Membres temporaires

Les articles 87 et 87.1 de la Loi sur les tribunaux judiciaires habilite le Conseil de la magistrature de l'Ontario à statuer sur les plaintes portées contre toute personne qui était protonotaire de la Cour suprême avant le 1er septembre 1990 et contre tout juge provincial qui était affecté à la Cour provinciale (Division civile) avant le 1er septembre 1990. Lorsque le Conseil de la magistrature de l'Ontario instruit une plainte portée contre un protonotaire ou un juge de l'ancienne Division civile, le juge qui est membre du sous-comité des plaintes est remplacé par un membre temporaire nommé par le juge en chef de la Cour supérieure de justice. Il peut s'agir, selon le cas, d'un protonotaire ou d'un juge provincial qui siège à la Cour des petites créances.

Durant la période couverte par le présent rapport, les personnes suivantes ont été nommées membres temporaires du conseil de la magistrature de l'Ontario pour traiter les plaintes portées contre des juges et protonotaires nommés par l'autorité provinciale :

PROTONOTAIRES
Basil T. Clark, c.r.
Monsieur le juge M. D. Godfrey
R. B. Linton, c.r.
Madame la juge
R. B. Peterson
Pamela Thomson

JUGES

VALERIE P. SHARP, LL.B. Greffière
THOMAS GLASSFORD Greffière adjoint
(du 23 septembre 2002 au début de son congé parental le 24 février 2003)
ANA BRIGIDO Greffière adjointe interimaire
(à partir de février 2003)
JANICE CHEONG Secrétaire

3. Renseignements administratifs

Des locaux séparés adjacents au bureau du juge en chef, au centre-ville de Toronto, sont utilisés à la fois par le Conseil de la magistrature de l'Ontario et par le Conseil d'évaluation des juges de paix. La proximité entre le bureau du Conseil et celui du juge en chef permet à ces deux conseils de partager, selon les besoins, le personnel du bureau et d'administration ainsi que les services informatiques et de soutien, sans avoir à se doter d'un personnel de soutien d'envergure.

Les locaux des conseils servent principalement aux réunions des deux conseils et de leurs membres. Chaque conseil a ses propres numéros de téléphone et de télécopieur et ses propres articles de papeterie. Par ailleurs, chaque conseil a un numéro sans frais réservé à l'usage public à l'échelle de l'Ontario et un numéro sans frais à l'intention des personnes qui se servent d'un télécopieur.

Au cours de la huitième année d'activités du Conseil, le personnel du Conseil de la magistrature de l'Ontario et du Conseil d'évaluation des juges de paix était composé d'une greffière, d'un greffier adjoint (pour une partie de l'année) et d'une secrétaire :

VALERIE P. SHARP, LL.B. Greffière
THOMAS GLASSFORD Greffière adjoint
(du 23 septembre 2002 au début de son congé parental le 24 février 2003)
ANA BRIGIDO Greffière adjointe interimaire
(à partir de février 2003)
JANICE CHEONG Secrétaire

Le paragraphe 49 (3) de la Loi sur les tribunaux judiciaires autorise le juge en chef de la Cour de justice de l'Ontario à nommer un juge provincial à titre de membre temporaire du Conseil de la magistrature de l'Ontario pour satisfaire aux exigences législatives en matière de quorum pour les réunions, les comités d'examen et les

1. Composition et modalités de nomination

Le Conseil de la magistrature de l'Ontario est constitué des membres suivants :

- ◆ le juge en chef de l'Ontario (ou un autre juge de la Cour d'appel désigné par le juge en chef);
- ◆ le juge en chef de la Cour de justice de l'Ontario (ou un autre juge de cette Cour désigné par le juge en chef);
- ◆ le juge en chef adjoint de la Cour de justice de l'Ontario;
- ◆ un juge principal régional de la Cour de justice de l'Ontario nommé par le lieutenant-gouverneur en conseil sur la recommandation du procureur général;
- ◆ deux juges de la Cour de justice de l'Ontario nommés par le juge en chef de cette Cour;
- ◆ le trésorier du Barreau du Haut-Canada ou un autre conseiller du Barreau qui est un avocat, désigné par le trésorier;
- ◆ un avocat qui n'est pas conseiller du Barreau du Haut-Canada, nommé par le Barreau;
- ◆ quatre personnes qui ne sont ni juges ni avocats, nommées par le lieutenant-gouverneur en conseil sur la recommandation du procureur général.

Le juge en chef de l'Ontario préside toutes les instances concernant des plaintes portées contre des juges particuliers, sauf les réunions du comité d'examen qui sont présidées par un juge provincial désigné par le Conseil de la magistrature. Le juge en chef de l'Ontario préside aussi les réunions tenues pour examiner les demandes relatives aux besoins d'un juge en raison d'une invalidité ou pour examiner le maintien en fonction d'un juge en chef ou d'un juge en chef adjoint. Le juge en chef de la Cour de justice de l'Ontario préside toutes les autres réunions du Conseil de la magistrature.

2. Membres titulaires

Durant sa neuvième année d'activités (soit du 1^{er} avril 2003 au 31 mars 2004), le Conseil de la magistrature de l'Ontario était composé des membres suivants :

Membres de la magistrature

JUGE EN CHEF DE L'ONTARIO

R. Roy McMurtry(Toronto)

JUGE EN CHEF DE LA COUR DE JUSTICE

DE L'ONTARIO

Brian W. Lennox(Ottawa/Toronto)

JUGE EN CHEF ADJOINT DE LA COUR DE JUSTICE

DE L'ONTARIO

J. David Wake(Toronto)

JUGE PRINCIPAL RÉGIONAL

Raymond P. Tallon

(à compter du 21 novembre 2001)(Lindsay)

DEUX JUGES NOMMÉS PAR LE JUGE EN CHEF DE

LA COUR DE JUSTICE DE L'ONTARIO

Madame la juge Marjoh Agro(Million)

Madame la juge Deborah Livingstone(London)

Membres avocats

TRÉSORIER DU BARREAU DU HAUT-CANADA

Vern P. Khurshna, c.r. (jusqu'au 26 juin 2003)(Toronto)

Frank Marrocco, c.r. (à compter du 26 juin 2003) (Toronto)

AVOCAT DÉSIGNÉ PAR LE TRÉSORIER DU

BARREAU DU HAUT-CANADA

Julian Porter, c.r.(Toronto)

AVOCAT DÉSIGNÉ PAR LE BARREAU

DU HAUT-CANADA

Patricia D.S. Jackson(Toronto)

NEUVIÈME RAPPORT ANNUEL DU CONSEIL DE LA MAGISTRATURE DE L'ONTARIO 2003 – 2004

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INTRODUCTION

La période couverte par le présent rapport s'étend du 1^{er} avril 2003 au 31 mars 2004.

Le Conseil de la magistrature de l'Ontario enquête sur les plaintes dont il est saisi par le public contre les juges et protonotaire provinciaux. En outre, il approuve annuellement le plan de formation des juges provinciaux et a approuvé les critères de maintien en fonction et les normes de conduite élaborées par le juge en chef de la Cour de justice de l'Ontario. Le Conseil de la magistrature peut aussi rendre une ordonnance pour tenir compte des besoins d'un juge qui, en raison d'une invalidité, est incapable d'exercer les fonctions de sa charge. Une telle ordonnance peut être rendue par suite d'une plainte (si l'invalidité était un facteur dans la plainte) ou à la demande du juge en question. Bien que le Conseil de la magistrature ne s'occupe pas directement de la nomination des juges provinciaux, il est représenté par l'un de ses membres au sein du Comité consultatif sur les nominations à la magistrature provinciale.

Durant la période couverte par le présent rapport annuel, le Conseil de la magistrature de l'Ontario exerçait sa compétence sur environ 260 juges et protonotaire provinciaux nommés par la province.

CONSEIL DE LA MAGISTRATURE DE L'ONTARIO



Le 31 mars 2005

L'honorable Michael Bryant
Procureur général de l'Ontario
720, rue Bay, 1^{er} étage
Toronto (Ontario)
M5G 2K1

Monsieur le procureur général,

Nous avons le plaisir de vous présenter le rapport annuel de la neuvième année d'activités du Conseil de la magistrature de l'Ontario, conformément au paragraphe 51 (6) de la Loi sur les tribunaux judiciaires. La période couverte par le présent rapport s'étend du 1^{er} avril 2003 au 31 mars 2004.

Veuillez agréer, Monsieur le procureur général, l'expression de nos sentiments respectueux.

R. Roy McMurry
Juge en chef de l'Ontario

Brian W. Lennox
Juge en chef
Cour de justice de l'Ontario



Brian W. Lennox

LE JUGE EN CHEF
COUR DE JUSTICE DE L'ONTARIO

Coprésident, Conseil de la magistrature de l'Ontario



Roy R. McMurtry

JUGE EN CHEF DE L'ONTARIO

Coprésident, Conseil de la magistrature de l'Ontario

CONSEIL DE LA MAGISTRATURE
DE L'ONTARIO

2003 – 2004

NEUVIÈME
RAPPORT ANNUEL



CONSEIL DE LA MAGISTRATURE
DE L'ONTARIO

2003 – 2004

NEUVIÈME
RAPPORT ANNUEL

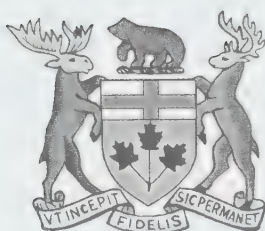


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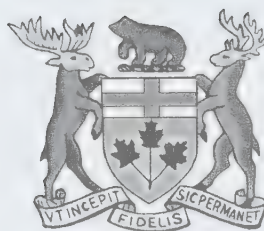
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TENTH ANNUAL REPORT

2004 – 2005

ONTARIO JUDICIAL COUNCIL



TENTH ANNUAL REPORT

2004 – 2005

ONTARIO JUDICIAL COUNCIL



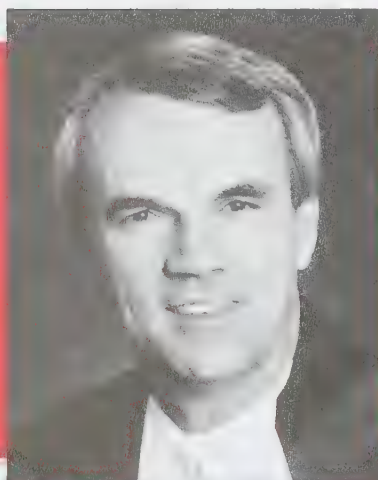
ISSN 1206-467X



The Honourable R. Roy McMurtry

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council

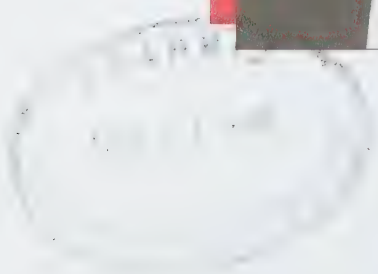


The Honourable Brian W. Lennox

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council





ONTARIO JUDICIAL COUNCIL

MARCH 31, 2006

The Honourable Michael Bryant
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its tenth year of operation, in accordance with subsection 51(6) of the Courts of Justice Act. The period of time covered by this Annual Report is from April 1, 2004 to March 31, 2005.

Respectfully submitted,

R. Roy McMurtry
Chief Justice of Ontario

Brian W. Lennox
*Chief Justice
Ontario Court of Justice*



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2004 to March 31, 2005.

The Ontario Judicial Council investigates complaints made by the public against provincially appointed judges and masters. In addition, it approves the education plan for provincial judges on an annual basis and has approved criteria for continuation in office and standards of conduct developed by the Chief Justice of the Ontario Court of Justice. The Judicial Council may make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative.

The Ontario Judicial Council had jurisdiction over approximately 275 provincially-appointed judges and masters during the period of time covered by this Annual Report.

TENTH OJC ANNUAL REPORT

2004 – 2005

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1. Composition and Terms of Appointment

The Ontario Judicial Council includes:

- ♦ the Chief Justice of Ontario (or designate from the Court of Appeal)
- ♦ the Chief Justice of the Ontario Court of Justice (or designate from the Ontario Court of Justice)
- ♦ the Associate Chief Justice of the Ontario Court of Justice
- ♦ a Regional Senior Judge of the Ontario Court of Justice appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- ♦ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice
- ♦ the Treasurer of The Law Society of Upper Canada or another bencher of the Law Society who is a lawyer, designated by the Treasurer
- ♦ a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society
- ♦ four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

The Chief Justice of Ontario chairs all proceedings dealing with complaints against specific judges, except for the review panel meetings, which are chaired by a provincial judge, designated by the Judicial Council. The Chief Justice of Ontario also chairs meetings held for the purpose of dealing with applications to accommodate a judge's needs resulting from a disability or meetings held to consider the continuation in office of a Chief Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice chairs all other meetings of the Judicial Council.

2. Members – Regular

The membership of the Ontario Judicial Council in its tenth year of operation (April 1, 2004 to March 31, 2005) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

R. Roy McMurtry(Toronto)

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

Brian W. Lennox(Ottawa/Toronto)

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

J. David Wake(Toronto)

REGIONAL SENIOR JUSTICE

Raymond P. Taillon(Lindsay)
(to September 1, 2004)

REGIONAL SENIOR JUSTICE

G. Normand Glaude(Sudbury)
(from January 12, 2005)

TWO JUDGES APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Madam Justice Marjoh Agro.....(Milton)

The Honourable Madam Justice Deborah Livingstone
.....(London)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Frank Marrocco, Q.C.(Toronto)

LAWYER DESIGNATED BY THE TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Julian Porter, Q.C.(Toronto)

LAWYER DESIGNATED BY THE LAW SOCIETY OF UPPER CANADA

Patricia D. S. Jackson(Toronto)

Community Members:

MADELEINE ALDRIDGE(Toronto)
Teacher, Toronto Catholic District School Board
(from October 14, 2004)

JOCELYNE COTÉ-O'HARA(Toronto)
President, CORA Group

PAUL HAMMOND(Bracebridge)
President and CEO, Muskoka Transport Ltd.
(to June 30, 2004)

WILLIAM JAMES(Toronto)
Chair, Inmet Mining
(to March 21, 2005)

HENRY WETELAINEN(Wabigoon)
Ontario Metis – Aboriginal Association
(to March 1, 2005)

Members – Temporary

Sections 87 and 87.1 of the *Courts of Justice Act* gives the Ontario Judicial Council jurisdiction over complaints made against every person who was a master of the Supreme Court prior to September 1, 1990 and every provincial judge who was assigned to the Provincial Court (Civil Division) prior to September 1, 1990. When the Ontario Judicial Council deals with a complaint against a master or a provincial judge of the former Civil Division, the judge member of the complaint subcommittee is replaced by a temporary member appointed by the Chief Justice of the Superior Court of Justice – either a master or a provincial judge who presides in “Small Claims Court”, as the case may be.

During the period of time covered by this report, the following individuals served as temporary members of the Ontario Judicial Council when dealing with complaints against these provincially-appointed judges and masters: -

MASTERS	JUDGES
• Master Basil T. Clark, Q.C.	• The Honourable Justice M.D. Godfrey
• Master R.B. Linton, Q.C.	
• Master R.B. Peterson	• The Honourable Justice Pamela Thomson

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. The following judges of the Ontario Court of Justice have been appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council when required:

The Honourable Justice Bernard M. Kelly
The Honourable Justice Claude H. Paris

3. Administrative Information

Separate office space adjacent to the Office of the Chief Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils’ office to the Office of the Chief Justice permits both Councils to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff.

Councils’ offices are used primarily for meetings of both Councils and their members. Each Council has a separate phone and fax number and its own stationery. Each has a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

In the tenth year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, an assistant registrar (for part of the year) and a secretary:

VALERIE P. SHARP, LL.B. – Registrar
THOMAS GLASSFORD – Assistant Registrar
(on parental leave from August 16 to December 13, 2004)
JANICE C. CHEONG - Secretary

4. Education Plan

The Chief Justice of the Ontario Court of Justice is required, by section 51.10 of the *Courts of Justice Act*, to implement, and make public, a plan for the continuing

judicial education of provincial judges and such education plan is required to be approved by the Judicial Council as required by subs. 51.10(1). During the period of time covered by this Annual Report a continuing education plan was developed by the Chief Justice in conjunction with the Education Secretariat and the continuing education plan was approved by the Judicial Council. A copy of the continuing education plan for 2004-2005 can be found at Appendix "C".

5. Ethical Principles for Judges

The Chief Justice of the Ontario Court of Justice, together with the Ontario Conference of Judges, proposed to the Ontario Judicial Council that the principles contained in the Canadian Judicial Council's text, "*Ethical Principles for Judges*" form part of the ethical standards governing the conduct of judges of the Ontario Court of Justice. On February 11th, 2005, the members of the Ontario Judicial Council unanimously agreed to the adoption of this text. A copy of this document may be found at Appendix "E"

6. Communications

The website of the Ontario Judicial Council continues to include information on the Council as well as information about upcoming hearings. Copies of "Reasons for Decision" are posted on the website when released and the most recent publicly available Annual Report is included in its entirety.

The address of the OJC website is: www.ontariocourts.on.ca/.

7. Judicial Appointments Advisory Committee

Since proclamation of amendments to the *Courts of Justice Act* in February, 1995, the Judicial Council no longer has any direct involvement in the appointment of provincial judges to the bench. However, a member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee (J.A.A.C.) as its representative. The Honourable Madam Justice Marjoh Agro was appointed by the OJC to act as its representative on J.A.A.C.

8. The Complaints Procedure

A complaint subcommittee of Judicial Council members, comprised always of a provincially-appointed judicial officer (a judge, other than the Chief Justice of the Ontario Court of Justice, or a master) and a lay member, examines all complaints made to the Council. The governing legislation empowers the complaint subcommittee to dismiss complaints which are either outside the jurisdiction of the Council (i.e., complaints about federally appointed judges, matters for appeal, etc.) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee. A more detailed outline of the Judicial Council's procedures is included as Appendix "B".

Once the investigation is completed, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Justice of the Ontario Court of Justice for an informal resolution, refer the complaint to mediation or refer the complaint to the Judicial Council, with or without recommending that it hold a hearing. The decision of the complaint subcommittee must be unanimous. If the complaint subcommittee members cannot agree, the complaint subcommittee shall refer the complaint to the Council to determine what action should be taken.

A mediation process may be established by the Council and only complaints which are appropriate (given the nature of the allegations) will be referred to mediation. The Council must develop criteria to determine which complaints are appropriate to refer to mediation.

The Council (or a review panel thereof), will review all recommendations for disposition of a complaint made by a complaint subcommittee and may approve the proposed disposition or replace any decision of the complaint subcommittee if the Council (or review panel), decides the decision was not appropriate. If a complaint has been referred to the Council by the complaint subcommittee, the Council (or a review panel thereof), may dismiss the complaint, refer it to the Chief Justice of the Ontario Court of Justice or a mediator or order that a hearing into the complaint be held. Review panels are composed of two provincial judges (other than the Chief



Justice of the Ontario Court of Justice), a lawyer and a lay member. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant or the subject judge.

Complaint subcommittee members who participated in the screening of the complaint are not to participate in its review by Council or in a subsequent hearing. Similarly, review panel members who dealt with a complaint's review or referral will not participate in a hearing of the complaint, if a hearing is ordered.

By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of six members of Council – two members of the complaint subcommittee and four members of the review panel.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is able to conduct a hearing into a complaint if a hearing has been ordered. Hearing panels are to be made up of at least two of the remaining six members of Council who have not been involved in the process up to that point. At least one member of a hearing panel is to be a lay member and the Chief Justice of Ontario, or his designate from the Court of Appeal, is to chair the hearing panel.

A hearing into a complaint is public unless the Council determines, in accordance with criteria established under section 51.1(1) of the *Courts of Justice Act*, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, in which case the Council may hold all or part of a hearing in private.

Proceedings, other than hearings to consider complaints against specific judges, are not required to be held in public. The identity of a judge, after a closed hearing, will only be disclosed in exceptional circumstances as determined by the Council. In certain circumstances, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a judge. The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints.

After a hearing, the hearing panel of the Council may dismiss the complaint (with or without a finding that it is

unfounded) or, if it finds that there has been misconduct by the judge, it may impose one or more sanctions or may recommend to the Attorney General that a judge be removed from office.

The sanctions which can be imposed by the Judicial Council for misconduct, either singly or in combination, are as follows:

- ◆ a warning
- ◆ a reprimand
- ◆ an order to the judge to apologize to the complainant or to any other person
- ◆ an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge
- ◆ suspension, with pay, for any period
- ◆ suspension, without pay, but with benefits, for up to thirty days

The Council may also make a recommendation to the Attorney General that the judge be removed from office. This last sanction stands alone and cannot be combined with any other sanction.

The question of compensation of the judge's costs incurred for legal services in the investigation of a complaint and/or hearing into a complaint may be considered by the review panel or by a hearing panel when a hearing into the complaint is held. The Council may order compensation of costs for legal services (based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services) and the Attorney General is required to pay compensation to the judge if such a recommendation is made.

The legislative provisions of the *Courts of Justice Act* concerning the Ontario Judicial Council are included as Appendix "D" to this Report.

9. Summary of Complaints

The Ontario Judicial Council received 36 complaints in its tenth year of operation, as well as carrying forward 35 complaint files from previous years. Of these 71

complaints, 52 files were closed before March 31, 2004, leaving 19 complaints to be carried over into the eleventh year of operation. There was insufficient time to investigate the fourteen files opened near the end of 2004/beginning of 2005 in order to meet the deadline for the last meeting of Year 10 held on February 11, 2005. There were also two files carried over to Year 11 which were files ordered to a public hearing where hearing dates could not be arranged in Year 10.

An investigation was conducted in all cases. The complaint subcommittee reviewed the complainant's letter and, where necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make its determination about the complaint. In some instances, further investigation was conducted where it was warranted. The four members of each review panel agreed with the recommended disposition of the complaint by the complaint subcommittee after the review panel examined the complaint and the investigation, which had been conducted, in most cases. There were six files where the members of the review panel either didn't agree with the recommendation or ordered that further investigation be conducted (please see file nos. 07-021/01, 09-002/03, 09-003/03, 09-023/03, 09-026/03 and 10-001/04).

Thirty-nine (39) of the 52 complaint files closed were **dismissed** by the Judicial Council.

Seventeen (17) of the 39 complaint files **dismissed** by the Ontario Judicial Council during the period of time covered by this report were found to be outside the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a judge's decision,

but who made no allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside the jurisdiction of the Judicial Council.

The remaining twenty-two (22) of the 39 complaint files that were **dismissed** by the OJC contained allegations of judicial misconduct including allegations of improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias. The allegations contained in each of these files were investigated by a complaint subcommittee and determined to be unfounded.

The remaining thirteen (13) files of the 52 files which were **closed** in year 10, were closed without being dismissed: seven (7) files were referred to the Chief Justice of the Ontario Court of Justice, Mr. Justice Brian W. Lennox, to speak to the three judges in question (file nos. 07-021/01, 08-038/03, 09-002/03, 09-003/03, 09-027/03, 09-034/03 and 09-046/04); one complaint file was referred to the Chief Justice of the Superior Court of Justice, Madam Justice Heather Smith (file no. 09-026/03); two files were closed when it was determined that the matter was still before the courts and the file had been opened prematurely (file nos. 10-022/04 and 10-026/05); the remaining three files which were closed in year 10, either went to a hearing or were ordered to a hearing. Two of those 3 files were matters which had been carried over from previous years where the hearing took place in Year 10 (08-024/02 and 08-031/02). In the remaining file, the judge involved resigned after the OJC ordered a hearing and the file was then closed since the Council no longer had jurisdiction (09-053/04).

FISCAL YEAR:	00/01	01/02	02/03	03/04	04/05
Opened During Year	55	52	49	55	36
Continued from Previous Year	52	44	33	34	35
Total Files Open During Year	107	96	82	89	71
Closed During Year	63	63	48	54	52
Remaining at Year End	44	33	34	35	19



10. Case Summaries

In all cases that were closed during the year, notice of the Judicial Council's decision, with the reason(s) therefore, was given to the complainant and to the subject judge, in accordance with the judge's instructions on notice (please see page B-26 of the O.J.C. Procedures Document, Appendix "B").

Files are given a two-digit prefix indicating the year of Council's operation in which they were opened, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 10-035/04 was the thirty-fifth file opened in the tenth year of operation and was opened in calendar year 2004.).

Details of each complaint, with identifying information removed as required by the legislation, follow.



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CASE NO. 07-021/01

The complainant advised that he had accompanied his wife on the court appearances she'd had to make regarding the support, custody and access of the son she'd had with her ex-husband. The complainant alleged that the judge who presided over his wife's family court proceedings, "repeatedly bullied, threatened, slandered and pronounced his wife guilty of having done things she had not". The complainant advised that he had the same impression of the judge on each occasion his wife had attended at court.

After reading the transcripts and listening to the audiotapes of the various court proceedings, the complaint subcommittee requested a response from the judge. In his response the judge advised that he regretted "the intensity" of his manner in dealing with the complainant's wife which he stated derived from his desire to impress her with the seriousness of her actions and the possible consequences which could result if she did not comply with the court's access orders (i.e., she could be incarcerated). The judge also sincerely apologized for the fact that the complainant found his conduct to be offensive.

The complaint subcommittee recommended that the complaint be dismissed. In the complaint subcommittee's view, the tone of the judge's voice and some of the interactions with the complainant's wife were inappropriate but fell short of judicial misconduct. The review panel disagreed with the recommendation of the complaint subcommittee and were of the opinion that the inappropriate conduct of the judge warranted the referral of this complaint and two similar complaints (files #09-002/03 & 09-

003/03) to the Chief Justice of the Ontario Court of Justice.

The complaint was referred to the Chief Justice to review with the subject judge. In his report back to the review panel, the Chief Justice confirmed that both he and the subject judge had listened to the audiotapes of the proceedings in all three files in addition to reading the transcripts. The Chief Justice indicated in his report to the Council that the judge agreed that his expressions of frustration and exasperation could have created a misapprehension in the mind of the complainant and his wife and ultimately agreed that his conduct was inappropriate. The Chief Justice expressed his satisfaction that the judge appreciated the concerns of the Council and since being apprised of the complaints has made efforts to be more calm and to modulate his voice in court proceedings. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 08-016/02

The complainant is a psychologist who was an expert witness called by the Crown on a dangerous offender application which had been brought to court by the Crown Attorney's office. The individual who was the subject of the application was subjected to various psychological tests and assessments which were conducted by the complainant/psychologist. The complainant provided the OJC with a copy of a letter which had been written to the College of Psychologists by the Asst. Crown Attorney who had brought the dangerous offender application before the

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court. The Assistant Crown Attorney had written to the College of Psychologists citing six specific concerns regarding the complainant/psychologist's methodology, which had become apparent during cross-examination by defence counsel. The Asst. Crown Attorney advised that she had asked the court to dismiss the application after the testimony of the complainant/psychologist as it was obvious that the testing methods and results were seriously flawed and could not be relied upon. The Assistant Crown Attorney's letter appeared to be in support of a letter of complaint to the College of Psychologists by the defence counsel in this matter. In the Assistant Crown's letter to the College, reference was made to the presiding judge having referred to the complainant as a "monstrosity" and, further, that "he could not rely on a single word she said". The Assistant Crown indicated that this statement was made on the record. The complainant/psychologist alleged that the judge to whom the remarks were attributed had thus improperly and unjustly vilified her character.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts and audiotapes of the proceedings. The initial materials received by Court Services contained only the transcripts and audiotapes for the evidence portion of the application. This material confirmed that no statements attributed by the Assistant Crown Attorney, in her letter to the College of Psychologists, to the judge had been made. The complaint subcommittee requested further information from the Assistant Crown Attorney. In her response to Council's request for more information, the Assistant Crown Attorney confirmed that no "off the

record" comments were made by the judge and that she deferred to the record as transcribed. Upon further investigation with Court Services, two additional proceedings were discovered, which related to the decision and sentencing portion of the application. These transcripts and audiotapes were provided by Court Services and were deemed complete and accurate through a thorough comparison with the audiotapes. The complaint subcommittee noted that the only reference the judge made to the creditability of the complainant was that her evidence was "unbelievable", which was an appropriate finding of credibility in the complaint subcommittee's view.

The complaint subcommittee recommended that the complaint be dismissed as there appeared to be no basis to the complaint other than the remarks attributed to the judge in the letter from the Assistant Crown Attorney and no objective evidence was found to corroborate the allegations. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-038/03

The complainant is a paralegal who on the first appearance in a domestic proceeding was reluctantly permitted by the presiding judge to appear on behalf of the applicant in the proceeding. The paralegal made a second appearance on behalf of the applicant and alleged the judge berated him and threatened imprisonment if he spoke out.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts

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and audiotapes of the proceedings. Based on its review of the materials, the complaint subcommittee recommended that this complaint be referred to the Chief Justice. In making that recommendation, the complaint subcommittee indicated that Rule 4(1)(c) of the Family Law Rules permits a party to be represented by a non-lawyer in special circumstances, with the permission of the court. The complaint subcommittee noted that it is therefore quite permissible for the court to refuse to permit a paralegal to represent a party unless those special circumstances are made out. In this case however, the members of the complaint subcommittee were of the view that the presiding judge was indeed rude to the complainant. The review panel agreed with the complaint subcommittee's recommendation that this matter be referred to the Chief Justice together with a similar complaint (file no. 09-034/03). The judge was provided with a copy of the complaint material and responded to Council acknowledging the complaint had some merit. The complaint was then referred to the Chief Justice to review with the subject judge. In his report back to the review panel, the Chief Justice expressed his satisfaction that the judge appreciated the concerns of Council and recommended no further action be taken. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-002/03

The complainants are a husband and wife who were involved in a Family Court matter concerning the husband's ex-wife and the previous custody, access and support arrangements made in 1998 concerning the husband's son from the previous

marriage. From the transcript forwarded with the letter of complaint, it appeared that part of the arrangement made in 1998 was formalized in a court order which gave custody to the mother, terminated support obligations of the father, but failed to address the issue of access. The ex-wife had now returned to court to have support for her son re-instated.

The respondent to that application (the complainant) had since re-married and had two other children with his new wife. In his letter of complaint, the respondent father indicated that he and his new wife made life-changing decisions regarding their family based on the 1998 court order. He alleged that the judge who heard the application for re-instatement of support by the ex-wife failed to pay attention to the facts, evidence and circumstances of each family and instead issued a final order, awarding the reinstatement of the child support payments retroactive to the date the application was made (June 2002), but not retroactive to the termination of support in 1998. The respondent father's new wife also filed a complaint alleging that the judge showed no regard for the couple's two children (and their need for care) when he ordered support payments to be paid for the son of the previous relationship.

The complaint subcommittee reviewed the complaint and the transcript together with the audiotapes of the court proceeding. The complaint subcommittee requested a response from the judge with respect to the two letters of complaint. The complaint subcommittee recommended to the review panel that the complaints be dismissed as they were of the view that the complaint concerned the decision of the judge and the



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manner in which he made the order. The complaint subcommittee noted that the judge's tone of voice was less than ideal at times as he explained the process to the un-represented complainants, however, in their view, it fell short of judicial misconduct.

The review panel disagreed with the recommendation of the complaint subcommittee and were of the opinion that the inappropriate conduct of the judge warranted the referral of this complaint and two similar complaints (files #07-021/01 & 09-003/03) to the Chief Justice of the Ontario Court of Justice. In making the decision to refer this complaint to the Chief Justice, the review panel was of the view that in this instance the judge expressed exasperation and frustration in an extreme manner, which may have left the impression of high-handedness.

The complaint was referred to the Chief Justice to review with the subject judge. In his report back to the review panel, the Chief Justice confirmed that both he and the subject judge had listened to the audiotapes of the proceeding in addition to reading the transcript. The Chief Justice indicated in his report that the judge agreed his expressions of frustration and exasperation could have created a misapprehension in the mind of the complainants and ultimately agreed that his conduct was inappropriate. The Chief Justice expressed his satisfaction that the judge appreciated the concerns of the Council and since being apprised of the complaints has made efforts to be more calm and to modulate his voice in court proceedings. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-003/03

The complainant was counsel for the respondent in a Family Court matter. The complainant alleged that the judge in question was rude and insulting throughout the court appearance, often interrupting and not allowing him to make submissions. The complainant further alleged that the judge suggested to his client that he report him to the Law Society of Upper Canada and accused the complainant of "habitually flaunting the rules" and not filing documents on time.

The complaint subcommittee reviewed the complaint and requested and received a transcript and audiotape of the court proceeding. The complaint subcommittee requested a response from the judge with respect to the complainant's concerns. The complaint subcommittee recommended to the review panel that the complaint be dismissed. It was the view of the complaint subcommittee that the judge and counsel (complainant) disagreed over whether the complainant habitually refused to comply with the Family Law Rules. The complaint subcommittee noted, from reviewing the audiotape of the court proceeding, that both the judge's and complainant's voices were loud and excited at times. The complaint subcommittee viewed the judge's suggestion of recusing himself from hearing any further cases with this counsel, as perhaps the most effective remedy.

The review panel disagreed with the recommendation of the complaint subcommittee and were of the opinion that the inappropriate conduct of the judge warranted the referral of this complaint and two similar complaints (files #07-021/01 & 09-002/03) to the Chief Justice of the Ontario

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Court of Justice. A letter was sent to the Judge asking for his acknowledgement that there was some merit to the complaint and that he was in agreement with the decision to have this matter referred to the Chief Justice. In the judge's response, he indicated that, in his view, his conduct was justified in dealing with the lawyer and he wished to have Council clarify its concerns. The Judicial Council advised the judge that their concern was focused on the judge's conduct and demeanor during the proceedings and not on the message about flaunting the Family Law Rules that the judge was attempting to convey. In his response, the judge acknowledged that there was some merit to the complaint, however expressed concern that Council's ultimate letter to the complainant may leave the impression that Council condoned the complainant's behaviour.

The complaint was referred to the Chief Justice to review with the subject judge. In his report back to the review panel, the Chief Justice confirmed that both he and the subject judge had listened to the audiotapes of the proceeding in addition to reading the transcript. The Chief Justice indicated in his report that the judge agreed his expressions of frustration and exasperation could have created a misapprehension in the mind of the complainant and ultimately agreed that his conduct was inappropriate. The Chief Justice expressed his satisfaction that the judge appreciated the concerns of the Council and since being apprised of the complaints has made efforts to be more calm and to modulate his voice in court proceedings. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-010/03

The complainant was charged and convicted of assault. The complainant alleged that he "was found guilty due to the corruption of two small towns that neighbour each other and because I chose to represent myself which the court frowns upon. I proved in court beyond a shadow of a doubt that is undisputable (sic), that I am innocent."

The investigating complaint subcommittee reviewed the complainant's letters and recommended to the review panel that the complaint be dismissed because the complaint is about the decision of the judge and, without evidence of judicial misconduct is outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee noted that the proper remedy for the complainant would have been an appeal of the judge's decision. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-023/03

The complainant was a court employee who was allegedly assaulted by a judge presiding at the same court location where she works. The judge who had allegedly assaulted her was suspended with pay, awaiting a Judicial Council hearing and the outcome of a criminal charge (see OJC File no. 08-031/02). After the judge had been suspended, the complainant indicated she was told by another court employee about an e-mail concerning the assault charge that was sent by a judge to the other judges at the same court location. The complainant was concerned about what the e-mail allegedly said about the dangers of other judges working with her. She also expressed

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concern about the hostility she felt was directed towards her by some judges and some court staff because of her original complaint about the alleged sexual assault.

The complaint subcommittee reviewed the complaint and retained an investigator to ascertain the name of the judge who had allegedly authored the e-mail in question. The complaint subcommittee then requested and reviewed a response from the judge in question. The judge's letter of response explained the concern he had, after he had been advised of the suspension of the judge who had been charged. The judge explained in his response that e-mails and comments from him, after the fact, were a result of his concern about potential conflicts of interest arising out of continuing to work with the employee alleging harassment because he could be a potential witness for the judge who had been suspended. The complaint subcommittee accepted the judge's explanation and recommended that the complaint be dismissed.

The members of the review panel were of the view that further inquiries should be made in an attempt to acquire a copy of the e-mail. The review panel directed the subcommittee to contact the Local Administrative Justice and Regional Senior Justice and request a copy of the e-mail. After making inquiries, the complaint subcommittee reported that no copy of the e-mail could be found. The complaint subcommittee recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-025/03

The complainant was the biological father of a child who was in his mother's custody. The child's mother was in a common-law relationship with a man the complainant alleged had abused his son. The complainant applied to the court to vary the final custody order that had given custody to the mother. The complainant, who was not represented by counsel, was unsuccessful in this application and complained that the judge cut him short in his presentation and alleged that the judge was rude and disrespectful, lost his composure and refused to allow the complainant an opportunity to present expert evidence as to whether or not the police and C.A.S. had followed proper interviewing techniques, policies and procedures into the allegation of assault supposedly committed by the common-law partner of the custodial parent.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript and audiotape of the court proceeding. The complaint subcommittee recommended that the complaint be dismissed after a review of the transcript and audiotape demonstrated that the judge was patient and calm and gave rational, fair and instructive reasons. It was the view of the complaint subcommittee that the judge was not rude nor disrespectful and allowed the complainant ample opportunity to present evidence. The complaint subcommittee noted that the case had been adjourned to allow the complainant the opportunity to present expert evidence. The record indicated that the complainant's expert was not available to attend at the previous court date and the matter was adjourned to the date in question to allow for her attendance. The sub-



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committee further noted that the complainant did not have his expert available to testify, but wanted to file her report, without providing proper notice. His request to do so was denied by the judge. If errors in law were committed by the judge, in not allowing the report to be entered as evidence or in any other matter of law decided by him (and the Judicial Council made no such finding), such errors may be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-026/03

The complainant is the plaintiff in a Small Claims Court matter concerning a fence dispute with his neighbour. The complainant indicated in his letter to the Judicial Council that he was well prepared and his evidence was well documented when he appeared before the subject judge for the pre-trial in this matter. The complainant alleged that the judge commented that "he could not spend much time on this case since he had an important case following". The complainant further alleged that the judge had not reviewed the evidence submitted by the complainant beforehand and that he refused to review evidence during the pre-trial. The complainant indicated that neither he nor the respondent were permitted to talk and alleged that the judge commented "if we spoke that he would send us to jail".

The complaint subcommittee reviewed the complaint and requested the transcript and

audiotape of the court proceeding. Court Services confirmed that the pre-trial was not recorded and therefore no audiotape or transcript could be provided. The complaint subcommittee then requested a response from the judge. In his letter of response, the judge denied having commented that he could not spend much time on the case since he had an important case following, as alleged by the complainant, and further indicated that he views all cases as important and worthy of the same attention. In addition, the judge indicated that he had reviewed the material and read the file in advance and recalled that the plaintiff prepared a well documented claim with many attachments. With respect to the allegation that the judge threatened imprisonment if either party spoke, the judge indicated that he usually tries to lighten the tensions felt by litigants and sometimes jokingly says "If you don't answer my question, I will give you three choices: One, jail for life; two, shot at dawn by a firing squad; or three, boiled in oil". The judge indicated that he uses these exact words and never in a serious way. The complaint sub-committee reported that the judge indicated that, in light of this complaint, he would refrain from making such comments in the future.

The complaint subcommittee recommended that the complaint be dismissed as there was no independent evidence found to support the allegations made by the complainant. The review panel members did not agree with the complaint subcommittee and recommended that the Judicial Council refer the complaint to the Chief Justice of the Superior Court of Justice to speak to the judge in question concerning the

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objectionable comments made. The Chief Justice of the Superior Court of Justice reported back to the review panel that she met with the judge complained against, reviewed the complaint and Council's concerns with him and reported that she was satisfied that the judge understood the language used was inappropriate and unwarranted and that he would avoid such conduct in future. The review panel expressed satisfaction with the report of the Chief Justice and recommended that the file be closed and the complainant be advised of the outcome of his complaint.

CASE NO. 09-027/03

The complainant was a judge who was visiting a judicial region in which the judge, who is the subject of the complaint, presided. The complainant indicated that the subject judge's ongoing courtroom conduct and practices were bringing him, and the administration of justice, into disrepute. The complainant advised that the allegations were based on personal observations, complaints by counsel and court staff that were made to the complainant, overheard conversations among staff and a newspaper article about a particular case, which was included with the letter of complaint. The complainant felt compelled to make the complaint because counsel and court staff appeared to be reluctant to make complaints themselves due to possible repercussions.

The conduct complained of included allegations that the subject judge "does not like listening to sentencing submissions", "does not like presiding over trials", "pressures people both directly and indirectly to resolve matters" and "has been

known to turn his back on the Court and say he won't listen any further and wants joint submissions for sentencing." The complainant also alleged that the subject judge "will attempt to avoid work by adjourning cases on any pretext" and thereby hears few trials and "creates chaos and delay." The complainant provided a specific example involving a case with a child witness who was to give testimony that was scheduled to be heard in an outlying court location and which was adjourned by the subject judge in order to set a date in a different court location.

The complainant further included a newspaper article about a sentencing hearing that had taken place some months previous. The complainant alleged that in this particular case the subject judge had demanded that crown and defence counsel make a joint submission on sentence and when they couldn't, he "ran an auction in the courtroom and was asking people individually [including the accused] what they thought about his sentence".

The complaint subcommittee reviewed the complaint material and requested and reviewed the transcripts of the two specific court proceedings to which the complainant had referred. The complaint subcommittee also requested and received a response from the subject judge in relation to his colleague's concerns. The subject judge was given the opportunity to await the receipt of the transcripts of the two specific court proceedings before responding to the complaint. However, the subject judge elected to respond to the complaint immediately, in an effort to resolve the matter as quickly as possible.

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In his response, the subject judge denied most of the allegations regarding his general management of his courts and his alleged reluctance to assist his colleagues. He denied categorically that he “does not like listening to sentencing submissions” and stated that he “encourage[s] the resolution of trials by having counsel prior to trial or pre-trial attempt to resolve the case themselves” but if they cannot he has always been prepared to conduct a judicial pre-trial conference. The judge also categorically denied that he “does not like presiding over trials” and “pressures people both directly and indirectly to resolve matters” as alleged and provided information on the assignment of cases in his region to refute the allegation.

The judge’s response also included specific rebuttal of the allegation that he adjourns “out of town” cases in an attempt to avoid work. His response provided a detailed explanation of the reasons for the adjournment in the specific case referred to by the complainant. The complaint subcommittee and members of the review panel were satisfied with the judge’s explanations concerning the complaints about his practices and procedures and agreed that no further action need be taken.

The judge, however, did admit that his conduct in the sentencing hearing that was the subject matter of the newspaper article was inappropriate. The complaint subcommittee recommended that the complaint be referred to the Chief Justice and the review panel agreed with the complaint subcommittee’s recommendation to refer the complaint to the Chief Justice together with a similar complaint (file no. 09-046/04).

After a meeting with the subject judge, the Chief Justice provided his report to the review panel and indicated that the judge immediately acknowledged that he had acted in an inappropriate and injudicious manner in dealing with this particular matter. This sentencing hearing was also the subject of a complaint from the victim of the assault and formed the basis of file 09-046/04, which was reviewed in conjunction with this file. The Chief Justice advised that the subject judge had explained that this proceeding was one of the most difficult over which he had ever presided and the circumstances surrounding the hearing all contributed to the conduct which led to the complaints. The Chief Justice indicated that the subject judge expressed sincere regret for conduct which he acknowledged fell below the standard of conduct expected from a judge and he further indicated that the subject judge had experienced considerable anxiety over the matter. The Chief Justice further reported that he was satisfied that the subject judge understood Council’s concerns and indicated he would not repeat such behaviour in the future. The Chief Justice recommended that no further action be taken with respect to this complaint and that the file be closed. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO.09-029/03

The complainant was in court on a charge of Theft Under \$5,000 and was convicted. The complainant was not represented by counsel at trial and advised that during the period of time between his conviction and his sentencing date

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he spoke to a lawyer, who he believes may have been in the courthouse as duty counsel, in order to get some advice. The complainant alleged that this lawyer spoke to the judge on his behalf, and returned “shaking his head” and told the complainant, “I don’t know what you have done to this guy...He [the judge] said, ‘I am going to nail this guy [the complainant]. I can’t stand his arrogance.’” The complainant advised that he was writing to the Judicial Council to “see Justice is done and damages are PAID”.

The members of the investigating complaint subcommittee ordered a copy of the transcript of the trial and the sentencing. They also requested and received a response to the complaint from the trial judge. The judge denied saying the words attributed to him and pointed out that the Crown in the case was asking for a “short, sharp jail sentence” rather than the fine that he ordered. The complaint subcommittee then wrote to the lawyer to whom the complainant advised he’d spoken. In his response to the Judicial Council, the lawyer could not recall representing or being retained by the complainant but acknowledged that he could have spoken to him over the lunch hour or during a free moment. The lawyer advised that he might have met with the Crown on behalf of the complainant but would not have met with the trial judge and he denied categorically ever relating the remarks as reported by the complainant.

As a result of the complainant’s allegations being contradicted by an independent witness, the complaint subcommittee concluded that there was no substance to the allegations and recommended that the complaint be dismissed as being

without foundation. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-030/03

The complainant appeared as duty counsel for an accused person, who was charged with one count of assault and one count of mischief under \$5,000. The complainant spoke to the accused and reviewed the disclosure material that, in his opinion, justified the accused’s original plan to plead “not guilty” to the charge of damage to property. The complainant was subsequently advised by the Crown that the Crown had spoken to the accused and offered to withdraw the charge if restitution was made for a broken window. The complainant was of the belief that this amounted to extortion because, in his view, the accused had not participated in the breaking of the window. The matter was brought back into court and the complainant alleged that the judge made a gratuitous and unnecessary remark to the accused, which may have had the effect of pressuring him into accepting the Crown’s plea bargain.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the court proceeding. The complaint subcommittee noted that the transcript confirmed that the judge, in granting the adjournment, did address the accused and, after confirming that the accused “had discussions with the Crown as to what alternatives there are to the prosecution of this matter”, added “Anything beats a conviction”. The complaint subcommittee requested a response from the judge. In her letter of response, the judge confirmed the comments as transcribed, however stated that as she was not

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aware of the discussions between the Crown, duty counsel and the accused or the disclosure made by the Crown, there was nothing that led her to believe there was any impropriety. Although the complaint subcommittee was of the view that the comment "Anything beats a conviction" was gratuitous and unnecessary, and was a comment that ought not to have been made, it recommended that the complaint be dismissed as the judge's conduct fell short of the test of judicial misconduct established by the Supreme Court of Canada in *Therrien v. Minister of Justice et al* (2001), 155 C.C.C. (3d) 1. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-031/03

The complainant was an informant and witness for the Crown in a criminal assault trial. The complainant alleged that the judge discriminated against her by not allowing her to tell her side of the story and by not allowing her to file some photographic exhibits.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the court proceeding. It was the view of the complaint subcommittee that there was nothing in the transcript to support the allegations made by the complainant and there was no evidence of judicial misconduct by the presiding judge. The complaint subcommittee noted that this was a criminal matter and therefore it was the Crown's case and jurisdiction to determine what evidence and testimony was required from witnesses. If errors in law were committed by the judge in not allowing certain evidence to be brought or in any

other decision of law (and the Judicial Council made no such finding) such errors may be remedied on appeal by the Crown and without evidence of judicial misconduct is outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee therefore recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-034/03

The complainant was the respondent in a family court proceeding dealing with the issue of responsibility for, and obligation to pay, maintenance for his daughter. An interim order was made by a judge (who is not the subject of this complaint) for the support of the child while the matter was awaiting trial. A subsequent endorsement by the same judge resulted in the matter proceeding to trial on an uncontested basis, since the respondent (the complainant) failed to pay the ordered support. The complainant appeared before the judge, who is the subject of this complaint, to ask him to order the Family Responsibility Office to refrain from suspending his driver's license. The complainant alleged that during the course of his appearance before the subject judge, the judge yelled at him and treated him with a lack of respect.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript and audiotape of the proceeding. The complaint subcommittee, based on a review of the materials, recommended that this complaint be referred to the Chief Justice. In making that recommen-

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dation, the complaint subcommittee suggested a set of conditions to be agreed to by the judge. Those conditions were that the judge must agree to apologize to the complainant and further that the judge must agree to seek stress/anger management counselling and be granted a leave of absence, if necessary, to obtain such counselling. The review panel agreed with the complaint subcommittee's recommendation that the complaint be referred to the Chief Justice with the aforementioned conditions. The review panel in agreeing with the condition that the judge be required to take counselling, added that the counselling is to be monitored by the Chief Justice. The subject judge was provided with a copy of the complaint material and acknowledged that the complaint had some merit. The complaint was referred to the Chief Justice of the Ontario Court of Justice to review with the judge together with a similar complaint (file no. 08-038/03). In his report back to the review panel, the Chief Justice indicated that the judge had arranged to meet with a counsellor on a regular basis and had been taking stress/anger management counselling since being advised of this complaint. In addition, the Chief Justice confirmed that the judge had sent a letter of apology to the complainant. The Chief Justice was satisfied that the judge quickly recognized the seriousness of his conduct when it was brought to his attention and took steps to avoid its repetition in the future. The Chief Justice advised that he was awaiting a counselling report and recommended that no further action be taken with respect to this complaint. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-036/03

The complainant filed an application under the Firearms Act and had to re-apply for a license for his rifle and shotgun. The application was refused by the Firearms Officer and the complainant appealed that refusal to the courts. After a full day review of the application and the decision to refuse licensing of the firearms, the decision of the Firearms Officer was upheld by the presiding judge and the license was denied. The complainant alleged misconduct and was of the view that the judge "discriminated against the physically disabled, demeaned, belittled and made disgraceful jest about the complainant and his father concerning physical disabilities". The complainant further alleged that the judge discriminated against his religious beliefs and that the judge refused to hear some of the evidence that the complainant wished to offer.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the trial and of the ruling on the application. It was the view of the complaint subcommittee that none of the allegations were supported by the complainant's material. The complaint subcommittee was also of the view that the transcripts of the proceeding did not support the allegations that the judge belittled, demeaned or made fun of the complainant or his father's physical disabilities or the complainant's religious beliefs. The complaint subcommittee recommended that the complaint be dismissed, as there was no evidence to support the allegations made by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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CASE NO. 09-038/03

The complainant was charged with criminal harassment and following trial was convicted of the offence and sentenced to a term of probation for two years. The complainant was of the opinion that the conviction was in error and the sentence imposed by the presiding judge was too harsh.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the reasons for decision given by the presiding judge. The complaint subcommittee recommended that the complaint be dismissed, as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making the decisions he made in this case. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-039/03

The complainant was the applicant in a Small Claims Court matter. During a pre-trial, which was heard in chambers and was off the record, the complainant alleged that the judge was rude, unfair and ordered her not to talk or the police would be called.

The complaint subcommittee reviewed the complaint material provided and requested and reviewed a response from the judge, as there was no transcript available for this appearance. In

responding, the judge indicated he had no specific recollection of the pre-trial attendance nor of the complainant's allegations regarding calling for security. The judge further indicated that all pre-trials are conducted in a fair and just manner and assured Council that parties are given ample opportunity to express their views. The complaint subcommittee noted that the purpose of a pre-trial is for the judge to provide his or her opinion about the likelihood of success of a person's case or defence, which the judge did in this matter. The complaint subcommittee recommended to the review panel that the complaint be dismissed, as there is no objective evidence to support the allegations made by the complainant of rudeness on the part of the judge or of the judge ordering the complainant not to talk. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-040/03

The complainant was a member of the public who, after reading an article in his local newspaper, complained about the comments made by a judge in sentencing a defendant in a criminal case involving domestic violence. The complainant was of the opinion that the Judge's comments that the defendant was "only doing what he's been taught so well" appeared to be condoning the violence of the defendant towards his spouse. The complainant was of the view that the message being sent by the Judge's comments was inappropriate. The complainant further objected to the sentence imposed by the judge as being "a travesty".

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The complaint subcommittee reviewed the complaint and the newspaper article provided by the complainant. The complaint subcommittee then requested and reviewed the transcript of the entire trial proceedings, including the sentencing of the defendant. It was the view of the complaint subcommittee that, while the judge did use the words complained of, the newspaper article to which the complainant referred to had, in the view of the subcommittee, taken the judge's comments out of context. The complaint subcommittee noted from the review of the transcript that the judge well recognized and discussed at length the issues of domestic violence and the need to denounce such conduct. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the judge's remarks, in context, did not support the allegation of judicial misconduct and the sentence imposed was a matter of judicial discretion. If errors in law were committed by the judge in this case (and the Judicial Council made no such finding), such errors could be remedied on appeal by the Crown and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-041/03

The complainant was a mother who, while resident in Ontario in 1998, was granted custody of her children. The father of the children was granted specified access. The complainant/mother subsequently moved to Saskatchewan and ultimately obtained a divorce with associated terms for custody and access. In July 2003, when

the mother was back in Ontario for a vacation, the father brought a motion for contempt of the previous court order and sought access. The complaint subcommittee reported that the court was satisfied that the mother, who did not appear at the motion, had notice of the motion. The judge, who is the subject of the complaint, made a specific order for access to take place while the children were in the jurisdiction, in compliance with the 1998 Family Court order. The complainant alleged that the judge, in granting the motion in July 2003 and ordering access for the father, acted without jurisdiction and caused her and her family stress and anxiety.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts of the motion for contempt proceedings as well as the review of that motion, which was conducted by the other judge (who was not the subject of this complaint). The complaint subcommittee reported that in July 2003, the judge who is the subject of the complaint, was unaware that there was a superseding divorce order that dealt with custody and access issues. Ultimately, another judge in Ontario dismissed the father's motion for contempt due to lack of jurisdiction as the divorce order, not the 1998 Family Court order, prevailed. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the subject judge acted appropriately based on the limited evidence before her and made a discretionary order which was limited in its scope and enforcement. The complaint subcommittee noted that once further information was before the court (and a different judge) on an automatic review of the order, the access was rescinded and the contempt motion

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dismissed for lack of jurisdiction in the Ontario Court of Justice. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-042/03

The complainant was charged with criminal offenses and represented himself at pre-trial proceedings. After a number of adjournments, the trial date was set but the accused/complainant failed to attend. In his letter to the Council, the complainant indicated that he had a doctor's appointment and required tests due to his experiencing dizziness and chest pains. The complainant further indicated that he had sent his surety to the court to request an adjournment on his behalf. A bench warrant was issued for his arrest and the complainant asserted that the judge had no jurisdiction to issue the bench warrant because the presiding justice was not a regular judge at that court location.

The complaint subcommittee reviewed the complaint material provided by the complainant. The complaint subcommittee noted that any judge of the Ontario Court of Justice has the jurisdiction to issue a bench warrant, even if he/she does not regularly preside in the city where the warrant was issued. In the opinion of the complaint subcommittee, because the accused was not present for his trial, and there was a record of advice to him about the trial date and what was expected of him, the judge had cause to issue a warrant of arrest to get the accused before the court. In the view of the complaint subcommittee, if there was a valid medical emergency which prevented

the accused from being in court, he could have produced proof of that through duty counsel when he eventually entered a plea of guilty to the charges. The complaint subcommittee recommended that the complaint be dismissed as an unfounded. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-043/03

The complainant was charged with a number of criminal offenses, including "impaired driving, fail to provide breath sample, dangerous operation of a vehicle and flight from Police". After a number of adjournments and delays including having a bench warrant issued to bring the accused before the courts, the trial of these matters finally took place. In his letter, the complainant, who was represented by duty counsel, alleged that he was coerced into pleading guilty and that he was not allowed to express himself, nor was he permitted to get necessary papers or his hearing aid.

The complaint subcommittee reviewed the complaint material provided by the complainant and requested and reviewed the transcript of the trial proceedings. The complaint subcommittee noted that the accused was represented by counsel and that the judge made sure the accused was able to hear and that he understood the proceedings and the sentence imposed. The complaint subcommittee further noted that the accused/complainant made no requests indicating that he needed any documents and made no comments to demonstrate any concern about his plea. The complaint subcommittee recommended that

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the complaint be dismissed as being without foundation after an examination of the transcript of record revealed no inappropriate conduct by the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-045/04

The complainant is a bailiff who was charged with break and enter and other criminal offences allegedly arising while in the execution of his duties as a bailiff. During his bail hearing, the complainant alleged that the judge berated, abused and humiliated him. Specifically the complainant noted that the judge commented that "I don't know how this man even got a bailiff's license with a criminal record" and "I myself would have detained him in a minute". The complainant also alleged that the decision of the judge to prohibit him from working as a bailiff was unfounded as the allegations against him were unproven.

The complaint subcommittee reviewed the complaint and the transcript of the Bail hearing provided by the complainant. The complaint subcommittee noted that the accused was represented by counsel and that at no time did the judge address the complainant directly. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was nothing in the transcript to indicate that the complainant was berated, abused or humiliated. The complaint subcommittee noted that the bail term imposed by the court was a matter of judicial discretion based on the submissions and the facts of the case, and that the

condition which prohibited the complainant from continuing to work as a bailiff was reversed on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-046/04

The complainant, who was the victim of a sexual assault, appeared before the subject judge at the sentencing hearing of her husband, who had pled guilty to the assault. This sentencing hearing formed part of the complaint investigated in OJC file# 09-027/03. The complainant indicated in her letter to the Judicial Council that she and her family were "horrificed, shocked and ashamed" of the way the judge handled the court proceeding. The complainant alleged that the judge displayed boredom and disinterest and allowed the accused and his family to disrupt the court proceeding and, in the process, subjected her to unnecessary and cruel treatment from them. The complainant described the situation in the court as "chaotic and uncontrolled", due to the judge's conduct in handling the accused and his family.

The complaint subcommittee reviewed this complaint in conjunction with File 09-027/03. The complaint subcommittee requested and reviewed the transcript of the court proceeding and also reviewed a response from the subject judge. In his response, the subject judge admitted that his conduct in handling and controlling the court proceeding was inappropriate and ineffective. The complaint subcommittee, based on a review of the materials, recommended that the complaint be referred to the Chief Justice. The review panel agreed with the recommendation of the

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complaint subcommittee to refer the complaint to the Chief Justice together with a similar complaint (file no. 09-027/03).

In his report back to the review panel, the Chief Justice indicated that the judge acknowledged that he had acted in an inappropriate and injudicious manner in dealing with what the judge referred to as one of the most difficult proceedings over which he had ever presided. According to the Chief Justice, the judge expressed regret for appearing to negotiate a disposition with the accused and the victim and recognized that his conduct fell below the expected standard for a judge of the Ontario Court of Justice. The Chief Justice expressed his satisfaction that the judge understood Council's concerns and recommended no further action be taken with respect to this complaint. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-048/04

The complainant was charged with three counts of fraud and was released on a "promise to appear" and a trial date of February 2004 was set. Prior to the trial date, the complainant was charged with further counts of fraud and released on bail on all charges. The subject judge decided to retain the February 2004 trial date on the original charges and have separate proceedings for the latter charges. The complainant alleged that the subject judge forced the original charges through to trial, without regard to the fact that a) he had not had representation throughout most of the pre-trial proceedings; b) he had just

retained legal counsel; c) his newly retained counsel was not available on the trial date that had been set and d) that he, and now his new counsel, had been unable to receive disclosure on the original charges, despite repeated attempts and requests. The complainant also alleged that the judge indicated that the trial date would go ahead, regardless of whether he or his counsel was prepared and regardless of whether he was represented or not.

The complaint subcommittee reviewed the complaint and recommended that it be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in managing this matter and making the decision to retain the trial date that had been set. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee also noted that the problems experienced by the complainant with respect to receiving disclosure from the Crown Attorney are outside the jurisdiction of the Judicial Council to review. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-049/04

The complainant was the respondent in a family court proceeding involving custody, access and child support issues. The complainant alleged that the judge "took sides" at an uncontested hearing and would not permit him or his lawyer to tell his side of the story.

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The complaint subcommittee reviewed the complaint and requested and reviewed the transcript and the audiotape of the court proceeding. The complaint subcommittee noted that a respondent in a domestic proceeding has 30 days within which to file an answer and sworn financial statement or, upon proper grounds, seek leave for late filing. Failure to do so will result in a respondent being noted in default and the matter proceeding without any further notice to him/her. The complaint subcommittee noted that in this case, the respondent failed to file his material as required and failed to seek leave for late filing. It was further noted by the complaint subcommittee that after the court had found the complainant in default and set a date for an uncontested hearing, the complainant appeared with a lawyer, and sought to file materials that were admittedly incomplete. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion to proceed in an uncontested fashion. In fact, the complaint subcommittee was of the opinion that the judge was generous in offering to set aside his order should counsel and the parties agree to another resolution of the issues. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-052/04

The complainant is the mother of a young person convicted at trial of uttering death threats against his girlfriend. The complainant alleged that the trial judge verbally abused her son and other witnesses, calling one a "mutt", and berating her son for being "worthless, violent and vindictive" even though he suffers from "disabilities". The complainant also alleged that the trial judge was overly friendly with the victim's mother in confirming her availability to attend for the date set for judgment.

The complaint subcommittee reviewed the complaint material and the transcripts of the trial and reasons for judgment provided by the complainant. The complaint subcommittee requested and reviewed the transcript of the sentencing proceeding as well as the audiotapes for all of the appearances. After a complete review of this material, the complaint subcommittee noted that at no time was the judge rude to the young accused or any witnesses during the trial nor during the delivering of his judgment. The subcommittee confirmed that the judge did not use the language alleged by the complainant in describing or characterizing the young accused as "worthless, violent and vindictive". In addition, the subcommittee noted there was no evidence at the trial that the young person was under any disability that might have required consideration by the judge. It was the view of the complaint subcommittee that the trial judge made findings of fact based on the credibility of witnesses, including the young accused. The subcommittee noted that the reference to "mutt" was taken out of context. In delivering his reasons, the subcommittee noted that the trial judge characterized the

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group of young persons (ages 12 to 14), who accompanied the young offender, as “a group of people who might be described as ‘Mutt and Jeff’” and further identified one of the witnesses as ‘Mutt’. The complaint subcommittee was of the opinion that the judge’s comments in this context, were made to emphasize the group consciousness of a number of boys who had skipped school. With respect to the allegation that the judge was overly friendly to the victim’s mother, the record confirmed that the judge simply asked if the date for continuation was convenient as it was during the Christmas vacation period. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the complaint related to the trial judge’s findings of credibility against the complainant’s son and not to any judicial misconduct by the presiding judge. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-053/04

The complainant was a Director of Crown Operations for one of the judicial regions in Ontario. The complaint was based on information brought to his attention by one of his Assistant Crown Attorneys. The complainant related the information provided to him, forming the allegation that a judge presiding in his judicial region contacted an Assistant Crown Attorney to ask for a loan of \$2000 and after the Assistant Crown Attorney declined, the subject judge phoned him and repeated his request. Shortly after this information was received by the Council, the complainant submitted a further complaint regarding the same judge, involving similar allegations brought forward by another Assistant

Crown Attorney. This material was added to the correspondence already under review by a complaint subcommittee of the Council.

After receiving the complaints, the complaint subcommittee recommended the suspension of the subject judge. The Regional Senior Judge accepted the complaint subcommittee’s recommendation and suspended the judge immediately. An investigator was retained to provide more details of the complaints and allegations. An investigation report, which included transcripts of the interviews with both Assistant Crown Attorneys, was reviewed and the complaint subcommittee requested a response from the judge to the original letters of complaint. A response from the judge was received and reviewed.

After considering the complaints, the investigation report and the response from the judge, the complaint subcommittee recommended that this matter proceed to a public hearing. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be ordered to a hearing. Subsequent to the OJC meeting at which the decision to send the complaints to a hearing was made, the complainant sent two more letters outlining allegations involving five more individuals involved in the criminal justice system in his judicial region. The OJC was in the process of arranging for investigation of the new complaints and the issuance and service of a Notice of Hearing on the original two complaints, when the OJC was advised that the judge who was the subject of the complaint had resigned from office. As a result, the OJC lost jurisdiction in the matter and the file was closed as no further action could be taken.

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CASE NO. 09-054/04

The complainant appeared in Provincial Offences Appeal Court on an application to extend time, in relation to a parking ticket. The complainant did not proceed with his application as he had resolved the appeal with the Provincial Prosecutor, who presented and explained the resolution to the presiding judge.

The complainant alleged that the judge displayed “attitude” and that the judge abused his judicial power and made inappropriate threats in questioning the Prosecutor regarding the resolution. The complainant indicated that he jokingly called the judge a “tough guy” in relation to the judge’s inquiries about the resolution, to which the complainant alleged the judge replied, “I’ll be a lot tougher if I see you reading a paper again in this room”. The complainant wrote a second letter to the Judicial Council a month later asking that his complaint be “cancelled”, stating, “I believe everyone is entitled to an opinion”.

The complaint subcommittee reviewed the letter of complaint and requested and reviewed the transcript and audiotape of the court proceeding in question. Although the complainant asked to withdraw his complaint, the Judicial Council was obligated to continue its review in compliance with the legislation. The complaint subcommittee recommended that the complaint be dismissed, as there was no evidence of judicial misconduct on the part of the judge. The complaint subcommittee was of the view that the audiotape, in particular, demonstrated that the judge was patient, courteous and professional at all times. The complaint subcommittee advised that when the judge asked reasonable questions of the

Prosecutor, the complainant displayed attitude, calling the judge a “tough guy”. It was the view of the subcommittee that the judge’s response was calm and appropriate, suggesting the complainant should not read the newspaper in court. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-055/04

The complainants were the grandparents of two children at the center of a highly contested family court proceeding. The complainants have complained to the Ontario Judicial Council about the same judge in the same proceedings. This matters involved custody and access litigation with numerous motions and changes in legal counsel, which have resulted in delays in determining trial issues and setting a trial date. The complainants have expressed their dissatisfaction and frustration with the entire judicial process.

The complaint subcommittee reviewed the complaint material provided and noted that this complaint covered the same timeframe as the complaint already dismissed by the Judicial Council. The complaint subcommittee recommended that the complaint be dismissed as it was of the opinion that the complaint concerned the results of the motions that had been made to the court and not issues of judicial misconduct. It was further noted by the complaint subcommittee that the litigation is still ongoing and that this judge may continue to be involved. The complaint subcommittee indicated that the Judicial Council, in reviewing the previous complaint, had already alerted the Children’s

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Aid Society about the concerns of potential abuse to the children expressed by the complainants. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-001/04

The complainant was a lawyer who represented a corporate accused in a serious Occupational Health and Safety Act prosecution. His client pled guilty, an Agreed Statement of Facts was filed and the corporate accused received a fine after a joint submission on sentencing. The complainant was concerned about the conduct of a different judge from the one who accepted the joint submission. The judge complained about presided over a trial that arose out of the same incident that led to the Health and Safe Act prosecution. The accused in the trial was an employee of the corporate accused who entered the plea in the O.H.S.A. prosecution. The Crown Prosecutor was the same for both the resolved matter involving the corporate accused and the trial of the employee.

The complainant alleged that the trial judge made comments about the corporate accused, specifically that "...the primary cause of the accident was the failure of the corporate accused to establish a safe working culture". The complainant also alleged that the subject judge had stated that, "part of the Agreed Statement of Fact presented to the other judge is not accurate". The complainant included a number of newspaper articles containing these comments following the trial and sentencing. The complainant alleged that the judge was guilty of judicial misconduct

because he made negative findings about a party not represented at trial and who was not present to testify or respond to the negative findings.

The complaint subcommittee reviewed the complaint material, which included the trial judge's comments as well as the newspaper articles relating to the trial and the sentencing. The complaint subcommittee noted that there was no representative of the corporate accused present at the trial of the employee and that the Crown prosecutor, who was involved in both matters, presented more detailed facts relating to the safety training of employees at the trial than had been contained in the Agreed Statement of Facts. The complaint subcommittee also noted that the judge made the statements in *obiter dictum* and were of the view that the comments were relevant to the facts before him and the decision rendered. The complaint subcommittee recommended that the complaint be dismissed, as it was of the opinion that the judge's comments did not amount to judicial misconduct. In the view of the complaint subcommittee, an appeal by the Crown was the correct remedy if the Judge made findings which were wrong in law or if the judge had misapprehended the facts. The review panel did not accept the recommendation of the complaint subcommittee to dismiss the complaint and were of the view that the judge's comments in the postscript of his decision may have been irrelevant and unnecessary and that the judge should be asked to respond to the complaint, with particular reference to his postscript comments. The judge's response was reviewed by the complaint subcommittee which did not change its recommendation to dismiss the complaint as nothing in the judge's response changed their



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view of the complaint or the judge's conduct. After considering the further material presented to them, the review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint. The Review Panel agreed that an Agreed Statement of Facts in another proceeding would not be binding on the judge in this matter and that, at the trial, more details concerning the training of employees were presented and the judge ruled based on the evidence presented to him. Ultimately, the Review Panel agreed that there was no misconduct apparent in the judge's ruling even though some of the comments he made at the conclusion of his judgment were unnecessary.

CASE NO. 10-002/04

The complainant was a plaintiff in a small claims court application where the defendant's husband, who also acted as her agent, is a "known Freemason". The complainant alleged the defendant's agent used known "Mason hand signals" to communicate with the judges before whom they appeared and who the complainant suspected were also members of the Freemason society. The complainant indicated that the defendant's agent "at times extended his arms with his palms held upward" which the complainant contends are "stress signals... that are made when they [i.e., Masons] make requests from one another".

The complainant requested that the Judicial Council investigate to determine whether or not the judges were members of the Freemason society and communicate its findings publicly.

The complaint subcommittee reviewed the complaint and recommended that it be dismissed as it was of the view that there was no judicial misconduct evident, nor any basis for an allegation of misconduct. Further, it was the view of the complaint subcommittee that the complainant was unhappy with the decision of the judges before whom he appeared. If errors in law were committed by the judges (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-003/04

The complainant was in court charged with possession of cocaine for the purposes of trafficking. The complainant pled guilty to the offence and received a substantial fine. The complainant applied to the sentencing judge for an extension of the time to pay the fine, explaining that she had believed one of her co-accused (against whom the charge had been withdrawn) was going to pay the fine on her behalf. When the sentencing judge denied the extension request, the complainant wrote to the Judicial Council and alleged that her request was denied because the judge was biased against her and had an undeclared conflict of interest. The complainant explained that the judge had been her lawyer in a family court matter before being appointed to the bench and she and the judge complained against hadn't "seen eye to eye on many issues, in

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fact had a few heated words about things". The complainant alleged that the judge "may still have bad feelings" towards her and the judge "should have stepped down from the bench since she was my lawyer before".

The members of the investigating complaint subcommittee reviewed the complainant's letter and the materials she had provided and also ordered and reviewed a copy of the transcript of her guilty plea and sentencing proceeding. After review of all the relevant materials, the complaint subcommittee recommended to the review panel that this complaint be dismissed as it was of the view that there was no judicial misconduct on the part of the presiding judge. The complaint subcommittee advised the review panel that the complainant was represented by counsel at the plea hearing, did not raise a concern about any conflict of interest at the time and entered a plea knowing that a joint submission made to the judge was for a fine. The complaint subcommittee further noted that the complainant's lawyer requested the thirty-day time period to pay the fine, the details were explained to the complainant and there was no comment or complaint by her at the time of the sentencing. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-004/04

The complainant was convicted at trial of failing to provide for his dogs under the *Criminal Code*. The complainant, who was not represented by a lawyer, alleged that during the trial the presiding judge commented that the veterinarian witness

was "a nice lady" and that after asking a question, the judge commented that "he would not win". The complainant indicated that he was not allowed to defend himself in court and alleged that the judge had already made his decision before hearing his defence.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the trial. After a thorough review of the transcript, the complaint subcommittee was of the view that there was no basis to the complaint as the record confirmed that neither alleged comment was made by the trial judge. The complaint subcommittee noted that the judge was patient and considerate of the accused at the trial, allowing him to question witnesses while seated, due to a disability. It was also noted that the judge was accommodating in explaining the appropriateness of questions and trial procedures. The transcript confirmed that the judge asked the complainant if he wished to present evidence and, in doing so, explained the procedure of providing evidence to the court. The complaint subcommittee noted that the complainant declined to present any evidence on his own behalf. The complaint subcommittee recommended that the complaint be dismissed as unfounded. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-005/04

The complainant was the biological father and the applicant on a motion brought in family court to vary the access order as it applied to his



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three children. The complainant alleged that the Judge failed to read documents that were filed with the court and disregarded the complainant's submissions supporting his motion to vary the access order. Further, the complainant alleged that the Judge's remarks were "obnoxious, offensive, repugnant, sleazy and contrary to s.15 of the *Charter*".

The complaint subcommittee reviewed the complaint material provided and requested and reviewed the transcript and audiotape of the court proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed, as it was of the view that the judge was aware of the issues before him and demonstrated an understanding of the submissions made in the case. It was Council's view that the judge gave the complainant the opportunity to present his concerns and offer alternate access arrangements to which the court could agree. In the opinion of the complaint subcommittee, the judge's comments were not viewed as "obnoxious, offensive, repugnant, sleazy and contrary to the *Charter*", as alleged by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-006/04

The complainant was the grandfather of a child who was the subject of custody and access litigation which came before the same judge in 1998 and 2001. The complainant expressed many objections to the various rulings the judge had made on access issues, primarily the decision made in 2001 that others in the family could have unsupervised access to the child but that he could

not. The complainant also expressed a concern that the judge had made the decisions he did because of a "family connection" he may have had to one of the parties involved in the litigation. The complainant also noted that if he had known of the existence of the Judicial Council in 2001, he would have complained sooner.

The complaint subcommittee reviewed the material provided by the complainant, including copies of the judgments made by the judge complained against. After consideration of the complaint and the materials provided, the complaint subcommittee recommended to the review panel that the complaint be dismissed because it was of the view that there was no judicial misconduct on the part of the judge in making the decisions he did with respect to custody and access. The complaint subcommittee further noted that the allegations of a "family connection" were not specific, were impossible to investigate because of their lack of specificity and appeared as an afterthought to the substantive complaint which is about the judge's decisions on access made over the years. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-007/04

The complainant's ex-wife appeared in criminal court, charged with stealing from a charity for which she had done volunteer work. The complainant objected to comments made by the presiding trial judge during sentencing about his ex-wife's life of "deprivation and torment" during her 28-year marriage to the complainant. The complainant wrote to the Regional Senior Judge of the presiding trial judge to object to the

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comments made about him in court and demanded that the Regional Senior Judge take “supervisory” action against the trial judge. When the Regional Senior Judge refused to respond to his concerns, the complainant wrote to the Judicial Council to complain about the Regional Senior Judge.

The investigating complaint subcommittee reviewed the material submitted by the complainant and recommended that his complaint against the Regional Senior Judge be dismissed as there was no basis for any complaint against him. The complaint subcommittee advised that it would have been improper conduct for the Regional Senior Judge to attempt to “supervise” or exert any influence or control over the presiding trial judge in the manner suggested by the complainant and the complainant’s request for him to do so was improper in itself. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-008/04

The complainant’s ex-wife appeared in criminal court, charged with stealing from a charity for which she had done volunteer work. The complainant complained to the Judicial Council about comments made by the presiding trial judge regarding his ex-wife’s life of “deprivation and torment” during her 28-year marriage to the complainant.

The investigating complaint subcommittee reviewed the complaint and the supporting material that had been provided by the complainant and reviewed a copy of the transcript of

the sentencing proceedings. The members of the complaint subcommittee reported to the review panel that, in their view, the complaint should be dismissed as there was no judicial misconduct on the part of the presiding judge. The complaint subcommittee advised the review panel as follows: the judge had been provided with a pre-sentence report for sentencing purposes. That report was made up of information which had been compiled from numerous third party sources, other than the complainant. The report contained information about the state of the former marriage between the complainant and the offender. The information was relied upon by defence counsel as a partial explanation for the offender’s criminal conduct. It was the view of the complaint subcommittee that the presiding judge referred to this report, and the information about the offender’s former marriage which was contained in it, in an appropriate way. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-009/04

The complainant was charged with one count of “Fraud under \$5000” and one count of “Possess coins for fraudulent use” under the *Criminal Code* in relation to using foreign currency in place of proper transit/subway tokens. The complainant alleged that the judge presiding over her case adjourned the matter four times in an effort to drive-up her legal costs. In addition, the complainant alleged that the judge made comments that were unnecessary, unprofessional and racist and which revealed his alleged “prejudgment” of the case. The complainant also alleged that the judge misdirected himself on the



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evidence and failed to rule on a *voir dire*. The complainant further alleged that the judge made gratuitous remarks when he sentenced her.

The complaint subcommittee reviewed the complaint material provided and reviewed the transcripts of all of the court proceedings, which were provided by the complainant. The complaint subcommittee recommended to the review panel that the complaint be dismissed because the transcript offered no support for the allegation that the judge needlessly adjourned the case. The complaint subcommittee also reported that the transcript offered no support for the complainant's allegations that the judge had made comments that were unnecessary, unprofessional or racist or which revealed any "prejudgment" of the case. In the opinion of the complaint subcommittee, the judge's interventions during testimony were entirely appropriate in order to understand the evidence. The complaint subcommittee was of the view that the judge's comments after sentencing were not inappropriate in the context in which they were given. The complaint subcommittee noted that many of the issues contained in the complainant's letter to Council were matters for appeal, which the complainant pursued. The complaint subcommittee further noted that the complainant's appeal was dismissed by the Ontario Court of Appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-010/04

The complainant was charged with public mischief and assault with a weapon and appeared in court in 1998. The complainant wrote to the OJC in 2004 to advise that the trial judge had abused her power and had slandered him in the remarks she made about him on sentence. The complainant also alleged that the judge had been in a conflict of interest situation at the time of the trial due to the fact that two witnesses at his trial allegedly owned and operated a restaurant that was across the street from the courthouse where the judge regularly sat.

The investigating complaint subcommittee reviewed the complainant's letter and ordered and reviewed a copy of the transcript of the complainant's trial and sentencing hearing. After review of the relevant material, the members of the complaint subcommittee recommended to the review panel that the complaint be dismissed as, in their view, there was no judicial misconduct by the trial judge. The complaint subcommittee noted that the trial judge made a finding of credibility as was required and it would appear that the complainant was simply unhappy that the trial judge didn't believe him and said so in her judgment. The complaint subcommittee also noted that there was no reference to the fact that the witnesses in the trial were known to anyone or that their restaurant was nearby and there was no conflict of interest demonstrated. The members of the complaint subcommittee further noted that the complainant was represented by counsel throughout the trial and the proper remedy if he was unhappy with the conviction or the sentence was to have appealed the result. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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CASE NO. 10-011/04

The complainant attended in family court at a hearing to determine child support. The complainant alleged that the judge in question “make (sic) orders according to his wishes...he doesn’t give any opportunity to the non-custodial parent to represent his case.” The complainant went on to state that the judge made an order for child support based on incorrect information about his income; which had been provided by his ex-wife, who is the custodial parent.

The investigating complaint subcommittee reviewed the letter of complaint and recommended to the review panel that the complaint be dismissed because it was apparent to them that the complainant was dissatisfied with the judgment of the court and had no basis for complaint or an allegation of judicial misconduct beyond the fact that he disagreed with the judge’s decision. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-013/04

Close to fifty people wrote letters and/or circulated petitions which they sent to the Ontario Judicial Council to express their unhappiness with the sentence that had been imposed by a judge in a high profile child abuse case. The members of the investigation complaint subcommittee recommended that the complaints be dismissed as all of the complaints dealt only the judge’s sentence and the Judicial Council has no jurisdiction to interfere with the decision a judge makes. The members of the complaint subcom-

mittee further advised the review panel that the Crown had appealed the judge’s sentence and that would be the only way to change the decision if the appeal court finds an error in law was made by the trial judge. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-014/04

A city councilor, on behalf of a constituent who was the owner of a bar that had been charged under a municipal smoking by-law, complained about a comment made by the judge who heard an appeal in the case. The judge’s comment was also picked up in an article in a local newspaper, and the complainant provided a copy of the newspaper article with his letter of complaint.

The investigating complaint subcommittee ordered the transcript of the appeal and reported to the review panel as follows: a bar owner had been charged under a municipal smoking by-law with obstruction of a municipal by-law enforcement officer. Apparently, the bar staff had refused the by-law enforcement officer access to the area behind the bar and also, the bar owner had his staff lock the doors to the bar during business hours. Regular customers had access to the bar with keys, but the by-law enforcement officers could not gain access. The bar owner was charged with obstruction under the non-smoking by-law and a trial was held before a Justice of the Peace. A signed copy of the by-law was not filed with the court at the time of the trial and the bar owner appealed the conviction on the grounds that the Justice of the Peace had no



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jurisdiction to hear the case as a result. The provincial prosecutor who appeared at the appeal of the matter advised the judge hearing the appeal that there were three other matters, pending trial, with similar facts and the prosecutor asked the appeal judge to send the matter back for a new trial. The appeal judge stated that he could not do so as there had been no proof before the trial court that there was a valid by-law in force at the time the charge was laid because the copy of the by-law that had been given to the Justice of the Peace wasn't signed. As a result, he did not allow the Crown's appeal and he did not direct a new trial.

The complaint subcommittee further reported that, after making his ruling, the appeal judge did go on to say, "...the hindering of their ability to go behind the bar amounts to an obstruction. As a gratuitous finding, to have them delayed in entering a public place because a key was required is also an obstruction. But since there was never any by-law proven before the trial judge, no one could be found guilty of having breached the bylaw." The city councilor, who wrote on behalf of his constituent (the bar owner), complained that the appeal judge had pre-determined "the outcome of a trial without hearing any evidence on this issue." (i.e., finding that locking the bar's doors amounted to obstruction).

The investigating complaint subcommittee reported to the review panel that this complaint should be dismissed because, while the judge's comments were clearly gratuitous (and he so noted they were gratuitous, on the record), they were not inappropriate in this case. The complaint subcommittee further noted that the sub-

ject judge did not send the matter back for a new trial nor did he make any ruling on the issue of obstruction and, in their view, there was no judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-015/04

The complainant was in family court to determine the amount of support payments that he owed to his ex-wife for his daughter's daycare costs. The complainant alleged that the case management judge who presided over the proceeding was not impartial, did not read the supporting case information, did not allow him to speak, mocked him throughout the hearing and was biased in her decision making.

The investigating complaint subcommittee reviewed the letter of complaint and also ordered and reviewed a transcript of the hearing. The members of the complaint subcommittee recommended to the review panel that the complaint be dismissed as they were of the view that there was no judicial misconduct. They advised the members of the review panel that there were two outstanding issues before the case management judge on the day in question; the complainant's income and the amount of his proportionate share of day care expenses. The complaint subcommittee reported that the case management judge was proactive in getting these issues resolved and the first issue, concerning the amount of the complainant's income, was resolved in his favour. The complaint subcommittee members advised that the issue of daycare expenses turned on \$6.00 a day and the com-

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plainant was unable to produce the evidence required by the court to support his position. The complaint subcommittee advised the review panel that the transcript showed the case management judge afforded the complainant every opportunity to speak and was polite herself and did not, in their view, demonstrate any bias. They advised that the matter before her was eventually resolved on consent of both the parties. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-016/04

The complainant wrote to the Judicial Council to complain about family courts in general and the decision of one family judge in particular. The complainant's sister had died, leaving two daughters who were the subject of protracted custody hearings in family court. Custody of the complainant's nieces was eventually awarded to their maternal grandfather. The complainant objected to this outcome and also objected to the "interference" of social workers at a hospital where the girls were treated. The complainant alleged that "no judge in his right mind would give custody to a 71 years (sic) old grandfather who had never even taken care of his own children" and further that the judge had "failed in his duty to administer fair justice". The complainant wanted the Judicial Council to "examine" the judge's decision.

The complaint subcommittee reviewed the complainant's letter and the documentation that she had provided in support of her complaint. The complaint subcommittee recommended that the

complaint be dismissed as there was no judicial misconduct in the exercise of the judge's discretion in making the decisions that he did in this case in awarding custody to someone other than the complainant. The members of the complaint subcommittee were of the view that the proper remedy would have been an appeal of the judge's decision to the appropriate court. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-017/04

The complainant wrote to the Judicial Council in August, 2004 to advise that he had been incarcerated since January, 2004 and was still awaiting trial. The complainant advised that he wanted to file a complaint "against the justice system for not dealing with me within a reasonable time".

The members of the investigating complaint subcommittee were of the view that the complaint should be dismissed as there was no allegation of judicial misconduct in the complainant's letter and it is not the responsibility of the judiciary to bring accused people before the court. The complaint subcommittee also noted that the complainant was represented by counsel and should have directed any questions about the length of his incarceration to his lawyer. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-018/04

The complainant's ex-wife applied to family court for child support. The complainant was the respondent in the application and he complained

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that the judge who heard the application acted improperly both procedurally and substantively.

The complaint subcommittee reviewed the material provided to the Judicial Council by the complainant and concluded that there was no judicial misconduct by the judge who heard the application and recommended to the review panel that the complaint be dismissed. The complaint subcommittee explained that if the complainant/respondent had not attended at the hearing of his ex-wife's application, the judge would have been able to make a provisional order for support and send the matter to the jurisdiction where the complainant lives for a confirmation hearing. Because the complainant chose to attend at court when the application was heard, the presiding judge was therefore entitled to make an order on the evidence before him. The complaint subcommittee further advised that because the complainant did not file any material at the hearing, as required by the Rules of the Family Court, he was not entitled to participate in the hearing and the court could proceed on a "default" or uncontested basis. The complaint subcommittee further advised that if there were any procedural or substantive irregularities (and they were not making any such finding), the remedy for the complainant would lie in an appeal to the appropriate court. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-019/04

The complainant is the respondent in a *Child and Family Services Act* proceeding in which the Children's Aid Society is seeking the extension of a restraining order against the respondent

mother, on behalf of the child who is the subject of the proceedings. The complainant indicated that previous restraining orders had been placed on her, often without providing her with notice of the proceedings or giving her the opportunity to submit a response to the applications. Aside from the allegations of misconduct and mistreatment by the Children's Aid Society and the Office of the Children's Lawyer, the complainant alleged that the judge was unfair and "politically motivated". During the court proceeding, which gave rise to the complaint to the Judicial Council, the complainant indicated that she walked out of court while court was still in session and alleged that the judge called for the security guards.

The complaint subcommittee reviewed the complaint material provided and reviewed the transcript of the court proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed, as the transcript offered no support for the allegations that the judge was unfair and/or "politically motivated". In addition, they advised that the transcript did not reveal the judge calling for the security guards. In the opinion of the complaint subcommittee, the judge was exceedingly polite and patient, allowing the complainant to respond to the application before the court and express her concerns. The complaint subcommittee was of the view that the judge based his order on the evidence contained in the continuing record as well as submissions by the child's lawyer, which outlined the intentions and wishes of the child. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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CASE NO. 10-022/04

The complainant wrote to advise that “a while ago”, he’d had a trial in criminal court on charges of uttering death threats and assault. The complainant advised that his lawyer had been late appearing in court for trial and the judge had insisted on proceeding without him. The complainant further alleged that once his lawyer did appear in court, the judge “was very angry with him and listened to nothing he said or any of [his] witnesses”. The complainant was convicted on both counts before the court and he alleged that he didn’t receive a fair trial. He also advised that he had a letter from his lawyer saying that the lawyer “would testify that [he] never received a fair trial.” He was asked to provide Council with copies of the transcripts of his trial and the letter from his lawyer and a complaint subcommittee was assigned to investigate his allegations. In a letter included with the transcripts and a copy of his Notice of Appeal, the complainant further alleged that there were “things said in the courtroom that are not transcribed” The complaint subcommittee ordered a copy of the audiotape of the trial in order to compare it with the transcripts, and wrote to the electronic (e-mail) address provided by the complainant, asking him to confirm that the sentencing had been concluded and to advise of the status of any appeals before the court. In his reply, the complainant advised that, though the trial had taken place in 2001 he had not attended for sentencing and it became apparent that the complainant had been “at large” ever since. He advised that he hadn’t returned to court for sentencing “for the simple reason that I will not allow a tyrant to sentence me!!” On receipt of this information, the complaint subcommittee was of the view that it

could not deal with the complainant’s matter until he ceases to be a fugitive from justice and his matter before the subject judge has been concluded. The complainant was so advised and the file in this matter was closed. The complainant was also advised that his complaint could be considered when he has advised that the sentencing has been concluded and there are no further outstanding court matters before the subject judge.

CASE NO. 10-023/04

The complainant pled guilty to a “Mischief under” charge on January 31, 2001 in front of a certain judge (Judge X). She was sentenced to a conditional discharge, with probation for 12 months. The complaint advised that the sentence documents were incorrectly endorsed and showed that she had received a suspended sentence, rather than the discharge. The complainant advised that she took the appropriate steps to have the error corrected, but she felt victimized by the system, and the police specifically, since this occurred. The complainant filed a complaint against Judge Y, who was the presiding judge in a subsequent “set date” proceeding, for not allowing her to address and inform the court of the error in the previous endorsement. Generally, she felt that the judges in the court have not listened to her concerns about the system.

The complaint subcommittee reviewed the complaint material provided and recommended to the review panel that the complaint be dismissed. In the view of the complaint subcommittee, Judge X, who sentenced the complainant in January 2001, did not commit any misconduct simply because the sentence he imposed was not

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recorded correctly. The complaint subcommittee noted that the error, which was obviously very concerning to the complainant, was corrected. The complaint subcommittee is of the view that Judge Y did not commit any misconduct as the error in the previous endorsement and associated police reports were unrelated to the purpose of the set date proceeding before him. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-026/05

The complainant was a biological father involved in a family court matter with his ex-wife relating to the custody and access of their son. The complainant indicated that he'd overheard an unrecorded conversation in which it was alleged that the judge instructed the lawyer representing his son to tell him that, "his father did not like him anymore and to tell my son that his father did not want to see him anymore". The complainant alleged that these comments were "clearly intended to mislead my son into thinking that his father had given up the fight in court to free him". Further, the complainant was of the opinion that the judge had some "special relationship" with Jewish Child and Family Services and therefore tended to favour their position in his decisions.

The complainant requested the Judicial Council to look into his complaint and have the judge who was the subject of his complaint barred from having anything more to do with his case. A complaint file was opened and assigned to a complaint subcommittee to investigate the complainant's allegations. In its letter of

acknowledgment sent to the complainant, Council clarified its jurisdiction and requested further information that was missing from the original letter of complaint. The complainant responded by submitting further information and on reviewing this material, it became apparent that this was an on-going court matter. Upon confirmation from Court Services that this case was currently before the Ontario Courts of Justice and specifically before the subject judge, the complaint subcommittee was asked for its opinion regarding whether or not to continue its investigation at that time. It was the opinion of the complaint subcommittee that it would be inappropriate for the Judicial Council to investigate the complainant's concerns while the case was before the courts. The complainant was notified of the complaint subcommittee's opinion and his complaint material was returned to him. The complaint file in this matter was closed, pending advice from the complainant that the matter has concluded and he wishes to re-submit his complaint.

11. Hearings

CASE NO. 08-024/02

The complainant was a defendant in a criminal case. The defendant complained about the judge's conduct and questioning of the defendant at the time of the defendant's entry of a guilty plea before the subject judge. The complaint continues by questioning the conduct of the same judge who spoke with a person outside the court facility, who had a connection to the defendant's family and, according to the complainant's information, discussed the complainant's case currently before the judge. The complainant requested on her next appearance that the judge in question recuse herself, which was done. The complainant further reports that the judge attempted to speak to the complainant's lawyer in private, which caused her further upset and concern.

The complaint subcommittee reviewed the complaint and retained the services of an investigator. Upon review of the investigation reports, the complaint subcommittee requested a response from the judge respecting this complaint. In her response, the judge acknowledged that her conduct was inappropriate and apologized for her actions. The complaint subcommittee recommended that this matter be referred to the Chief Justice. After careful consideration of the complaint and the facts brought out through investigation, the review panel decided to order a hearing. The majority of the review panel voted in favour of ordering a hearing. A Notice of Hearing was issued and a public hearing was held on June 29, 2004. As the criteria for a private hearing were not met, the hearing was held in public.

An Agreed Statement of Facts was filed at the hearing, which included a joint submission with respect to the nature of the conduct acknowledged by the judge and the degree of its seriousness. The complainant agreed with the joint submission in its entirety. At the conclusion of the hearing, the hearing panel determined that the judge's conduct, "though serious, falls within the lower end of the scale of judicial misconduct". The Hearing Panel was satisfied that the Judge had completely accepted the seriousness of her misconduct and would appreciate that any repetition could attract a more serious disposition.

The Hearing Panel believed that it was in the best interests of the administration of justice that the Judge continue to sit as a judge as she has done since the complaint was filed. There was no recommendation as to the payment of costs pursuant to section 51.7(4) of the *Courts of Justice Act*.

A copy of the complete text of the "Reasons for Decision" in this matter may be found at Appendix "F".

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CASE NO. 08-031/02

On December 6th, 2002, the OJC received an allegation of misconduct against a judge through courts administration in the Ministry of the Attorney General. The Ministry advised that one of its employees, a court clerk, had alleged that a judge had touched her inappropriately. The complaint was assigned to a complaint subcommittee and its members immediately retained an investigator to conduct interviews with the court clerk and with other courts administration employees. The members of the complaint subcommittee also asked the judge to respond to the complaint on December 10th, 2002. On December 13th, 2002 the members of the complaint subcommittee made a recommendation to a Regional Senior Judge (RSJ) that the judge complained against be suspended, with pay (as provided for in the *Courts of Justice Act*), until the complaint against him was finally disposed of or the complaint subcommittee and/or the OJC was made aware of facts or circumstances that would alter its recommendation. After a discussion with the subject judge, the RSJ agreed with the recommendation of the complaint subcommittee and the subject judge was suspended effective December 20, 2002. Further complaints about inappropriate conduct from five other members of the court staff in the court location where the subject judge presided were forwarded to Council's attention and were added to the investigation. The judge was asked for a response to the further complaints by letter dated January 17, 2003 and the Judicial Council was advised that a police investigation had been commenced. Judge's counsel asked for an extension of the time to provide a response to the complaints and an extension of time was granted to March 3, 2003.

A further request for an extension of time was denied. In his letter acknowledging the denial of the time extension, judge's counsel did advise that the judge denied any suggestion or allegation of misconduct or that he had engaged in any inappropriate contact with court staff. The complaint subcommittee reported to the review panel on March 11, 2003 that it was their recommendation that all six complaints go to a hearing and the members of the review panel agreed with that recommendation.

A Hearing Panel was struck and a Notice of Hearing, dated April 11, 2003, was prepared and served on counsel for the subject judge. On May 28th, the O.P.P. issued a press release advising that it had charged the subject judge with sexual assault with respect to the first incident brought to Council's attention involving the court clerk. On August 27, 2003, the OJC Hearing Panel convened to set a date for the hearing and to consider any preliminary motions. Counsel for the subject judge moved for an order adjourning the hearing until the criminal charge was concluded. Judge's counsel also moved for an order that the OJC hearing, whenever it occurred, be held *in camera*. The matter was adjourned to January 15, 2004 for an update on the status of the criminal charge and to set a date for the OJC hearing. On January 15, 2004, a date of June 15, 2004 was established for the determination of preliminary matters and the dates of August 3 to 13, 2004 were established for the hearing itself. Following the establishment of the hearing date, two more complaints about the judge's allegedly inappropriate conduct came into the OJC and were forwarded to the complaint subcommittee

HEARINGS

for investigation. These new complaints were disclosed to judge's counsel. After its investigation was concluded, the complaint subcommittee recommended that the two further complaints proceed to the hearing with the other six complaints, and this recommendation was accepted by the review panel.

The judge was acquitted of the criminal charge of sexual assault on May 6, 2004. The motion by judge's counsel to hold the OJC hearing *in camera* was heard by the Hearing Panel on June 15, 2004 and the application was rejected. The hearing was held in Toronto from August 3rd to 13th, inclusive. On September 24th, 2004, the Hearing Panel released its decision, finding that there had been misconduct and posted its reasons for decision on the OJC website on September 27th. A copy of the complete text of the "Reasons for Decision" in this matter may be found at Appendix "F". The date of November 16th, 2004 was established for the continuation of the hearing on the question of the appropriate sanction and to deal with any request for compensation for legal services to be made by judge's counsel. On November 15th, the OJC was advised by judge's counsel that the judge had resigned his judicial office and, as a result, was no longer under the jurisdiction of the Ontario Judicial Council.



APPENDIX-A

ONTARIO JUDICIAL COUNCIL –
DO YOU HAVE A COMPLAINT?

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

The information in this brochure deals with complaints of misconduct against a Provincial Judge or a Master.

Provincial Judges in Ontario – Who are they?

In Ontario, most criminal and family law cases are heard by one of the many judges appointed by the province to ensure that justice is done. Provincial Judges, who hear thousands of cases every year, practised law for at least ten years before becoming judges.

Ontario's Justice System:

In Ontario, as in the rest of Canada, we have an adversarial justice system. In other words, when there is a conflict, both parties have the opportunity to present their version of the facts and evidence to a judge in a courtroom. Our judges have the difficult but vital job of deciding the outcome of a case based on the evidence they hear in court and their knowledge of the law.

For this type of justice system to work, judges **must** be free to make their decisions for the right reasons, without having to worry about the consequences of making one of the parties unhappy – whether that party is the government, a corporation, a private citizen or a citizens' group.

Is a Judge's Decision Final?

The judge's decision can result in many serious consequences. These can range from a fine, probation, a jail term or, in family matters, placement of children with one parent or the other. Often, the decision leaves one party disappointed. If one of the parties involved in a court case thinks that a judge has reached the

wrong conclusion, they may request a review or an **appeal** of the judge's decision in a higher court. This higher court is more commonly known as an appeal court. If the appeal court agrees that a mistake was made, the original decision can be changed, or a new hearing can be ordered.

Professional Conduct of Judges

In Ontario, we expect high standards both in the delivery of justice and in the conduct of the judges who have the responsibility to make decisions. If you have a complaint about the conduct of a **Provincial Judge** or a **Master**, you may make a formal complaint to **The Ontario Judicial Council**.

Fortunately, judicial misconduct is unusual. Examples of judicial misconduct could include: gender or racial bias, having a conflict of interest with one of the parties or neglect of duty.

The Role of the Ontario Judicial Council

The Ontario Judicial Council is an agency which was established by the Province of Ontario under the *Courts of Justice Act*. The Judicial Council serves many functions, but its main role is to investigate complaints of **misconduct** made about provincially-appointed judges. The Council is made up of judges, lawyers and community members. The Council does **not** have the power to interfere with or change a judge's decision on a case. Only an appeal court can change a judge's decision.

Making a Complaint

If you have a complaint of misconduct about a Provincial Judge or a Master, you must state your complaint in a signed letter. The letter of complaint should include the date, time and place of the court hearing and as much detail as possible about why you feel there was misconduct. If your complaint involves an incident outside the courtroom, please provide as much information as you can, in writing, about what you feel was misconduct on the part of the judge.

If after careful consideration, the Council decides there has been no judicial misconduct, your complaint will be dismissed and you will receive a letter outlining the reasons for the dismissal.

In all cases, you will be advised of any decision made by the Council.

How are Complaints Processed?

When the Ontario Judicial Council receives your letter of complaint, the Council will write to you to let you know your letter has been received.

A subcommittee, which includes a judge and a community member, will investigate your complaint and make a recommendation to a larger review panel. This review panel, which includes two judges, a lawyer and another community member, will also carefully review your complaint prior to reaching its decision.

For Further Information

If you need any additional information or further assistance, in the greater Toronto area, please call 416-327-5672. If you are calling long distance, please dial the toll-free number: 1-800-806-5186. TTY/Teletypewriter users may call 1-800-695-1118, toll-free.

Written complaints should be mailed or faxed to:

The Ontario Judicial Council
P.O. Box 914
Adelaide Street Postal Station
31 Adelaide Street East
Toronto, Ontario M5C 2K3
416-327-2339 (FAX)

Decisions of the Council

Judicial misconduct is taken seriously. It may result in penalties ranging from issuing a warning to the judge, to recommending that a judge be removed from office.

If the Ontario Judicial Council decides there has been misconduct by a judge, a public hearing may be held and the Council will determine appropriate disciplinary measures.

Just a reminder...

The Ontario Judicial Council may only investigate complaints about the **conduct** of provincially-appointed Judges or Masters. If you are unhappy with a judge's **decision** in court, please consult with a lawyer to determine your options for appeal.

Any complaint about the **conduct** of a federally-appointed judge should be directed to the Canadian Judicial Council in Ottawa.



APPENDIX-B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

Please Note: All statutory references in this document, unless otherwise specifically noted are to the Courts of Justice Act, R.S.O. 1990, as amended.

COMPLAINTS

GENERALLY

Any person may make a complaint to the Judicial Council alleging misconduct by a provincially-appointed judge. If an allegation of misconduct is made to a member of the Judicial Council it shall be treated as a complaint made to the Judicial Council. If an allegation of misconduct against a provincially-appointed judge is made to any other judge, or to the Attorney General, the recipient of the complaint shall provide the complainant with information about the Judicial Council and how a complaint is made and shall refer the person to the Judicial Council.

subs. 51.3(1), (2) and (3)

Once a complaint has been made to the Judicial Council, the Judicial Council has carriage of the matter.

subs. 51.3(4)

COMPLAINT SUBCOMMITTEES

COMPOSITION

Complaints received by the Judicial Council shall be reviewed by a complaint subcommittee of the Judicial Council which consists of a judge, other than the Chief Justice of the Ontario Court of Justice and a lay member of the OJC (the term “judge” includes a master when a master is the subject of a complaint). Eligible members shall serve on the complaint subcommittees on a rotating basis.

subs. 51.4(1) and (2)

ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by members of complaint subcommittees and members of review panels can be found at pages 24 – 26 of this document.

STATUS REPORTS

Each member of a complaint subcommittee is provided with regular status reports, in writing, of the outstanding files that have been assigned to them. These status reports are mailed to each complaint subcommittee member at the beginning of every month. Complaint subcommittee members endeavour to review the status of all files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

Investigation

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

A complaint subcommittee shall follow the Judicial Council's guidelines and rules of procedures established for this purpose by the Judicial Council under subsection 51.5(1) in conducting investigations, making recommendations regarding temporary suspension and/or reassignment, making decisions about a complaint after their investigation is complete and/or in imposing conditions on their decision to refer a complaint to the Chief Justice of the Ontario Court of Justice. The Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the investigation of complaints by complaint subcommittees.

subs. 51.4(21)

AGREEMENT ON HOW TO PROCEED

Complaint subcommittee members review the file and materials (if any), and discuss same with each other prior to determining the substance of the complaint and prior to deciding what investigatory steps should be taken (ordering transcript, requesting response, etc.). No member of a complaint subcommittee shall take any investigative steps with respect to a complaint that has been assigned to him or her without first discussing the complaint with the other complaint subcommittee member and agreeing on the course of action to be taken. If there is a dispute between the complaint subcommittee members regarding an investigatory step, the matter will be referred to a review panel for its advice and input.

DISMISSAL OF COMPLAINT

A complaint subcommittee shall dismiss the complaint without further investigation if, in its opinion, it falls outside the Judicial Council's jurisdiction or if it is frivolous or an abuse of process.

subs. 51.4(3)

CONDUCTING INVESTIGATION

If the complaint is not dismissed, the complaint subcommittee shall conduct such investigation as it considers appropriate. The Judicial Council may engage persons, including counsel, to assist it in its investigation. The investigation shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(4), (5), (6) and (7)

PREVIOUS COMPLAINTS

A complaint subcommittee confines its investigation to the complaint before it. The issue of what weight, if any, should be given to previous complaints made against a judge who is the subject of another complaint before the OJC, may be considered by the members of the complaint subcommittee where the Registrar, with the assistance of legal counsel (if deemed necessary by the Registrar), first determines that the prior complaint or complaints are strikingly similar in the sense of similar fact evidence and

would assist them in determining whether or not the current incident could be substantiated.

INFORMATION TO BE OBTAINED BY REGISTRAR

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file. All material (transcripts, audio-tapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, on their instruction, and not by individual complaint subcommittee members.

TRANSCRIPTS, ETC.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved. If a transcript is ordered, court reporters are instructed not to submit the transcript to the subject judge for editing.

RESPONSE TO COMPLAINT

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at the hearing.

GENERALLY

Transcripts of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless a member advises otherwise.

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

ADVICE AND ASSISTANCE

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint. The complaint subcommittee may also consult with members of a Review Panel to seek their input and guidance during the investigative stages of the complaint process.

subs. 51.4(5)

MULTIPLE COMPLAINTS

The Registrar will assign any new complaints of a **similar nature** against a judge who already has an open complaint file, or files, to the same complaint subcommittee that is/are investigating the outstanding file(s). This will ensure that the complaint subcommittee members who are investigating a complaint against a particular judge are aware of the fact that there is a similar complaint, whether from the same complainant or another individual, against the same judge.

When a judge is the subject of three complaints from three different complainants within a period of three years, the Registrar will bring that fact to the attention of the Judicial Council, or a review panel thereof, for their assessment of whether or not the

multiple complaints should be the subject of advice to the judge by the Judicial Council or the Associate Chief Justice or Regional Senior Justice member of the Judicial Council.

INTERIM RECOMMENDATION TO SUSPEND OR REASSIGN

The complaint subcommittee may recommend to the appropriate Regional Senior Justice that the subject judge be suspended, with pay, or be reassigned to a different location, until the complaint is finally disposed of. If the subject judge is assigned to the region of the Regional Senior Justice who is a member of the Judicial Council, the complaint subcommittee shall recommend the suspension, with pay, or temporary reassignment to another Regional Senior Justice. The Regional Senior Justice in question may suspend or reassign the judge as the complaint subcommittee recommends. The exercise of the Regional Senior Justice's discretion to accept or reject the complaint subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice of the Ontario Court of Justice.

subs. 51.4(8), (9), (10) and (11)

COMPLAINT AGAINST CHIEF JUSTICE ET AL – INTERIM RECOMMENDATIONS

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice or the Regional Senior Justice who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

CRITERIA FOR INTERIM RECOMMENDATIONS TO SUSPEND OR REASSIGN

The Judicial Council has established the following criteria and rules of procedure under subsection 51.1(1) and they are to be used by a complaint subcommittee in making their decision to recommend to the appropriate Regional Senior Justice the

temporary suspension or re-assignment of a judge pending the resolution of a complaint:

subs. 51.4(21)

- where the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location
- where allowing the judge to continue to preside would likely bring the administration of justice into disrepute
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- where it is evident to the complaint subcommittee that a judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated

INFORMATION RE: INTERIM RECOMMENDATION

Where a complaint subcommittee recommends temporarily suspending or re-assigning a judge pending the resolution of a complaint, particulars of the factors upon which the complaint subcommittee's recommendations are based shall be provided contemporaneously to the Regional Senior Justice and the subject judge to assist the Regional Senior Justice in making his or her decision and to provide the subject judge with notice of the complaint and the complaint subcommittee's recommendation.

Where a complaint subcommittee or a review panel proposes to recommend temporarily suspending or re-assigning a judge, it may give the judge an opportunity to be heard on that issue in writing by notifying the judge by personal service, if possible, or if not registered mail of the proposed suspension or reassignment, of the reasons therefor, and of the judge's right to tender a response. If no response from the judge is received after 10 days from the date of mailing, the recommendation of an interim suspension or reassignment may proceed.

Reports to Review Panels

WHEN INVESTIGATION COMPLETE

When its investigation is complete, the complaint subcommittee shall either:

- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice,
- refer the complaint to a mediator, in accordance with criteria established by the Judicial Council pursuant to section 51.1(1), or
- refer the complaint to the Judicial Council, with or without recommending that it hold a hearing.

subs. 51.4(13)

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice of the Ontario Court of Justice or the Regional Senior Justice who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

PROCEDURE TO BE FOLLOWED

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint

subcommittee are ready to be reported to a review panel. The members of the complaint subcommittee will also provide a legible, fully completed copy of the appropriate pages of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration.

At least one member of a complaint subcommittee shall be present when the complaint subcommittee's report is made to a review panel. Attendance by a complaint subcommittee or review panel member may be by teleconference when necessary.

NO IDENTIFYING INFORMATION

The complaint subcommittee shall report its disposition of any complaint that is dismissed or referred to the Chief Justice of the Ontario Court of Justice or to a mediator to the Judicial Council without identifying the complainant or the judge who is the subject of the complaint and no information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

subs. 51.4(16)

DECISION TO BE UNANIMOUS

The decision by a complaint subcommittee to dismiss a complaint, refer the complaint to the Chief Justice of the Ontario Court of Justice or refer the complaint to a mediator must be a unanimous decision on the part of the complaint subcommittee members. If the complaint subcommittee members cannot agree, the complaint must be referred to the Judicial Council.

subs. 51.4(14)

CRITERIA FOR DECISIONS BY COMPLAINT SUBCOMMITTEES

A) TO DISMISS THE COMPLAINT

A complaint subcommittee will dismiss a complaint after reviewing the complaint if, in the complaint subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process. A complaint subcommittee may also recommend that a complaint be dismissed if, after

their investigation, they conclude that the complaint is unfounded.

subs. 51.4(3) and (13)

B) TO REFER TO THE CHIEF JUSTICE

A complaint subcommittee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaint subcommittee, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaint subcommittee will impose conditions on their referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject judge could take advantage and there is agreement by the subject judge.

subs. 51.4 (13) and (15)

C) TO REFER TO MEDIATION

A complaint subcommittee will refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the *Courts of Justice Act*. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where both members are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in the *Courts of Justice Act*. Until such time as criteria are established by the Judicial Council, complaints are excluded from the mediation process in the following circumstances:

- (1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;

- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

subs. 51.4(13) and 51.5

D) TO RECOMMEND A HEARING

A complaint subcommittee will refer a complaint to the Judicial Council, or a review panel thereof, and recommend that a hearing into a complaint be held where there has been an allegation of judicial misconduct that the complaint subcommittee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct

subs.51.4(13) and (16)

RECOMMENDATION RE: HEARING

If a recommendation to hold a hearing is made by the complaint subcommittee it may be made with, or without, a recommendation that the hearing be held *in camera* and if such recommendation is made, the criteria established by the Judicial Council (see page 11 below) will be used.

E) COMPENSATION

The complaint subcommittee's report to the review panel may also deal with the question of compensation of the judge's costs for legal services, if any, incurred during the investigative stage of the process if the complaint subcommittee is of the opinion that the complaint should be dismissed and has so recommended in its report to the Judicial Council. The Judicial Council may then recommend to the Attorney General that the judge's costs for legal services be paid, in accordance with section 51.7 of the *Act*.

subs. 51.7(1)

The decision as to whether or not to recommend compensation of a judge's costs for legal services will be made on a case by case basis.

REFERRING COMPLAINT TO COUNCIL

As noted above, a complaint subcommittee may also refer the complaint to the Judicial Council, with or without making a recommendation that it hold a hearing into the complaint. Both members of the complaint subcommittee need not agree with this recommendation and the Judicial Council, or a review panel thereof, has the power to require the complaint subcommittee to refer the complaint to it if it does not approve the complaint subcommittee's recommended disposition or if the complaint subcommittee cannot agree on the disposition. If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council, or a review panel thereof.

subs.51.4(16) and (17)

INFORMATION TO BE INCLUDED

Where a complaint is referred to a Review Panel of the Judicial Council by a complaint subcommittee, the complaint subcommittee shall forward to the Review Panel all documents, transcripts, statements, and other evidence considered by it in reviewing the complaint, including the response of the judge about whom the complaint is made, if any. The Review Panel shall consider such information in coming to its conclusion regarding the appropriate disposition of the complaint.

REVIEW PANELS

PURPOSE

The Judicial Council may establish a review panel for the purpose of: -

- considering the report of a complaint subcommittee,
- considering a complaint referred to it by a complaint subcommittee
- considering a mediator's report
- considering a complaint referred to it out of mediation, and
- considering the question of compensation

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

and the review panel has all the powers of the Judicial Council for these purposes.

subs. 49(14)

COMPOSITION

A review panel is made up of two provincially-appointed judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a lay member of the OJC and shall not include either of the two members who served on the complaint subcommittee who investigated the complaint and made the recommendation to the review panel. One of the judges, designated by the Council, shall chair the review panel and four members constitute a quorum. The chair of the review panel is entitled to vote and may cast a second deciding vote if there is a tie.

subs. 49(15),(18) and (19)

WHEN REVIEW PANEL FORMED

A review panel is formed to review the decisions made about complaints by complaint subcommittees and dispose of open complaint files at every regularly scheduled meeting of the OJC, if the quorum requirements of the governing legislation can be satisfied.

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the consideration

of complaint subcommittee reports made to a review panel or referred to it by a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for this purpose.

subs. 51.4(22)

Review of Complaint Subcommittee's Report

REVIEW IN PRIVATE

The review panel shall consider the complaint subcommittee's report, in private, and may approve its disposition or may require the complaint subcommittee to refer the complaint to the Council in which case the review panel shall consider the complaint, in private.

subs. 51.4(17)

PROCEDURE ON REVIEW

The review panel shall examine the letter of complaint, the relevant parts of the transcript (if any), the response from the judge (if any), etc., with all identifying information removed therefrom, as well as the report of the complaint subcommittee, until its members are satisfied that the issues of concern have been identified and addressed by the complaint subcommittee in its investigation of the complaint and in its recommendation(s) to the review panel about the disposition of the complaint.

A review panel may reserve its decision on a complaint subcommittee's recommendation and may adjourn from time to time to consider its decision or direct the complaint subcommittee to conduct further investigation and report back to the review panel.

If the members of the review panel are not satisfied with the report of the complaint subcommittee, they may refer the complaint back to the complaint subcommittee for further investigation or make any other direction or request of the complaint subcommittee that they deem to be appropriate.

If it is necessary to hold a vote on whether or not to accept the recommendation of a complaint subcommittee, and there is a tie, the chair will cast a second and deciding vote.

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

Referral of Complaint to a Review Panel

WHEN REFERRED

When a complaint subcommittee submits its report to a review panel, the review panel may approve the complaint subcommittee's disposition or require the complaint subcommittee to refer the complaint to it to consider. The members of a review panel will require a complaint subcommittee to refer the complaint to them in circumstances where the members of the complaint subcommittee cannot agree on the recommended disposition of the complaint or where the recommended disposition of the complaint is unacceptable to a majority of the members of the review panel.

subs. 51.4(13), (14) and (17)

POWER OF A REVIEW PANEL ON REFERRAL

If a complaint is referred to it by a complaint subcommittee or a review panel requires a complaint subcommittee to refer a complaint to it to consider, the complainant and the subject judge may be identified to the members of the review panel who shall consider the complaint, in private, and may: –

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(16) and (18)

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedures under subsection 51.1(1) with respect to the consideration of complaints that are referred to it by a complaint subcommittee or in consideration of complaints that it causes to be referred to it from a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for the purpose.

subs. 51.4(22)

Guidelines re: Dispositions

A) ORDERING A HEARING

A review panel will order a hearing be held in circumstances where the majority of members of the review panel are of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the review panel believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. The recommendation to hold a hearing made by the review panel may be made with, or without, a recommendation that the hearing be held *in camera* and if such recommendation is made, the criteria established by the Judicial Council (see page 18 below) will be used.

B) DISMISSING A COMPLAINT

A review panel will dismiss a complaint in circumstances where the majority of members of the review panel are of the opinion that the allegation of judicial misconduct falls outside the jurisdiction of the Judicial Council, is frivolous or an abuse of process, or where the review panel is of the view that, the complaint is unfounded. A review panel will not generally dismiss as unfounded a complaint unless it is satisfied that there is no basis in fact for the allegations against the provincially-appointed judge.

C) REFERRING A COMPLAINT TO THE CHIEF JUSTICE

A review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the majority of members of the review panel are of the opinion that the conduct complained of does not warrant another disposition and there is some merit to the complaint and the disposition is, in the opinion of the majority of members of the review panel, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A review panel will recommend imposing conditions on their referral of a complaint to the Chief Justice of the Ontario Court of Justice where a majority of the members of a review panel agree that there is some course of action or remedial training of which the subject judge can take advantage of and there is agreement by the judge in accordance with subs. 51.4(15). The Chief Justice of the Ontario Court of Justice will provide a written report on the disposition of the complaint to the review panel and complaint subcommittee members.

D) REFERRING A COMPLAINT TO MEDIATION

A review panel may refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the *Courts of Justice Act*. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where a majority of the members of the review panel are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in subsection 51.5(3) of the *Courts of Justice Act*. Until such time as criteria are established, complaints are excluded from the mediation process in the following circumstances:

- (1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;
- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

Notice of Decision

DECISION COMMUNICATED

The Judicial Council, or a review panel thereof, shall communicate its decision to both the complainant and the subject judge and if the Judicial Council decides to dismiss the complaint, it will provide the parties with brief reasons.

subs. 51.4(20)

ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by the Judicial Council when notifying the parties of its decision can be found at pages 25 and 26 of this document.

HEARING PANELS

APPLICABLE LEGISLATION

All hearings held by the Judicial Council are to be held in accordance with section 51.6 of the *Courts of Justice Act*.

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The *Statutory Powers Procedure Act* applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings without a hearing (section 4, S.P.P.A.) or its provisions for public hearings (subs. 9(1) S.P.P.A.). The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3) and 51.6(2)

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

The Judicial Council's rules of procedure established under subsection 51.1(1) apply to a hearing held by the Judicial Council.

subs. 51.6(3)

COMPOSITION

The following rules apply to a hearing panel established for the purpose of holding a hearing under section 51.6 (adjudication by the Ontario Judicial Council) or section 51.7 (considering the question of compensation):

- 1) half the members of the panel, including the chair, must be judges and half of the members of the panel must be persons who are not judges
- 2) at least one member must be a person who is neither a judge nor a lawyer
- 3) the Chief Justice of Ontario, or another judge of the Ontario Court of Appeal designated by the Chief Justice, shall chair the hearing panel
- 4) the Judicial Council may determine the size and composition of the panel, subject to paragraphs 1, 2 & 3 above
- 5) all the members of the hearing panel constitute a quorum (subs. 49(17))
- 6) the chair of the hearing panel is entitled to vote and may cast a second deciding vote if there is a tie
- 7) the members of the complaint subcommittee that investigated the complaint shall not participate in a hearing of the complaint
- 8) the members of a review panel that received and considered the recommendation of a complaint subcommittee shall not participate in a hearing of the complaint (subs. 49(20))

subs. 49(17), (18), (19) and (20)

POWER

A hearing panel established by the Judicial Council for the purposes of section 51.6 or 51.7 has all the powers of the Judicial Council for that purpose.

subs. 49(16)

HEARINGS

COMMUNICATION BY MEMBERS

Members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate. This prohibition on communication does not preclude the Judicial Council from engaging legal counsel to assist it and, in that case, the nature of the advice given by counsel shall be communicated to the parties so that they may make submissions as to the law.

subs. 51.6(4) and (5)

PARTIES TO THE HEARING

The Judicial Council shall determine who are the parties to the hearing.

subs. 51.6(6)

PUBLIC OR PRIVATE/ALL OR PART

Judicial Council hearings into complaints and meetings to consider the question of compensation shall be open to the public unless the hearing panel determines, in accordance with criteria established under section 51.1(1) by the Judicial Council, that exceptional circumstances exist and the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality in which case it may hold all or part of a hearing in private.

subs. 49(11) and 51.6(7)

The *Statutory Powers Procedure Act* applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings without a hearing (section 4, S.P.P.A.) or its provisions for public hearings (subs. 9(1), S.P.P.A.).

subs. 51.6(2)

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

If a complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of the complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

subs. 51.6(9)

OPEN OR CLOSED HEARINGS – CRITERIA

The Judicial Council has established the following criteria under subsection 51.1(1) to assist it in determining whether or not the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality. If the Judicial Council determines that exceptional circumstances exist in accordance with the following criteria, it may hold all, or part, of the hearing in private.

subs. 51.6(7)

The members of the Judicial Council will consider the following criteria to determine what exceptional circumstances must exist before a decision is made to maintain confidentiality and hold all, or part, of a hearing in private:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

REVEALING JUDGE'S NAME WHEN HEARING WAS PRIVATE – CRITERIA

If a hearing was held in private, the Judicial Council shall order that the judge's name not be disclosed or made public unless it determines, in accordance with the criteria established under subsection 51.1(1), that there are exceptional circumstances.

subs. 51.6(8)

The members of the Judicial Council will consider the following criteria before a decision is made about when it is appropriate to publicly reveal the name of a judge even though the hearing has been held in private:

- a) at the request of the judge, or
- b) in circumstances where it would be in the public interest to do so.

WHEN AN ORDER PROHIBITING PUBLICATION OF JUDGE'S NAME MAY BE MADE, PENDING THE DISPOSITION OF A COMPLAINT – CRITERIA

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

The members of the Judicial Council will consider the following criteria to determine when the Judicial Council may make an order prohibiting the publication of information that might identify the judge who is the subject of a complaint, pending the disposition of a complaint:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

NEW COMPLAINT

If, during the course of the hearing, additional facts are disclosed which, if communicated to a member of the Judicial Council, would constitute an allegation of misconduct against a provincially-appointed judge outside of the ambit of the complaint which is the subject of the hearing, the Registrar shall prepare a summary of the particulars of the complaint and forward

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – PROCEDURAL CODE FOR HEARINGS

same to a complaint subcommittee of the Judicial Council to be processed as an original complaint. The Complaint subcommittee shall be composed of members of the Judicial Council other than those who compose the panel hearing the complaint.

PROCEDURAL CODE FOR HEARINGS

PREAMBLE

These Rules of Procedure apply to all hearings of the Judicial Council convened pursuant to section 51.6 of the *Courts of Justice Act* and are established and made public pursuant to paragraph 51.1(1)6 of the *Courts of Justice Act*.

These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

INTERPRETATION

1. The words in this code shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Courts of Justice Act*.

(1) In this code,

- (a) “Act” shall mean the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended.
- (b) “Panel” means the Panel conducting a hearing and established pursuant to subsection 49(16) of the *Act*.
- (c) “Respondent” shall mean a judge in respect of whom an order for a hearing is made pursuant to subsection 51.4(18)(a) of the *Act*.
- (d) “Presenting Counsel” means counsel engaged on behalf of the Council to prepare and present the case against a Respondent.

PRESENTATION OF COMPLAINTS

2. The Council shall, on the making of an order for a hearing in respect of a complaint against a judge, engage Legal Counsel for the purposes of

preparing and presenting the case against the Respondent.

- 3. Legal Counsel engaged by the Council shall operate independently of the Council.
- 4. The duty of Legal Counsel engaged under this Part shall not be to seek a particular order against a Respondent, but to see that the complaint against the judge is evaluated fairly and dispassionately to the end of achieving a just result.
- 5. For greater certainty, Presenting Counsel are not to advise the Council on any matters coming before it. All communications between Presenting Counsel and the Council shall, where communications are personal, be made in the presence of counsel for the Respondent, and in the case of written communications, such communications shall be copied to the Respondents.

NOTICE OF HEARING

- 6. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.
- 7. Presenting Counsel shall prepare the Notice of Hearing

(1) The Notice of Hearing shall contain,

- (a) particulars of the allegations against the Respondent;
- (b) a reference to the statutory authority under which the hearing will be held;
- (c) a statement of the time and place of the commencement of the hearing;
- (d) a statement of the purpose of the hearing;
- (e) a statement that if the Respondent does not attend at the hearing, the Panel may proceed in the Respondent's absence and the Respondent will not be entitled to any further notice of the proceeding; and,

8. Presenting Counsel shall cause the Notice of Hearing to be served upon the Respondent by personal service or, upon motion to the Panel hearing the complaint, an alternative to personal service and shall file proof of service with the Council.

RESPONSE

9. The Respondent may serve on Presenting Counsel and file with the Council a Response to the allegations in the Notice Hearing.
 - (1) The Response may contain full particulars of the facts on which the Respondent relies.
 - (2) A Respondent may at any time before or during the hearing serve on Presenting Counsel and file with the Council an amended Response.
 - (3) Failure to file a response shall not be deemed to be an admission of any allegations against the Respondent.

DISCLOSURE

10. Presenting Counsel shall, before the hearing, forward to the Respondent or to counsel for the Respondent names and addresses of all witnesses known to have knowledge of the relevant facts and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
11. Presenting Counsel shall also provide, prior to the hearing, all non-privileged documents in its possession relevant to the allegations in the Notice of Hearing.
12. The Hearing Panel may preclude Presenting Counsel from calling a witness at the hearing if Presenting Counsel has not provided the Respondent with the witness's name and address, if available, and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
13. Part V applies, *mutatis mutandis*, to any information which comes to Presenting Counsel's attention after disclosure has been made pursuant to that Part.

PRE-HEARING CONFERENCE

14. The Panel may order that a pre-hearing conference take place before a judge who is a member of the Council but who is not a member of the Panel to hear the allegations against the Respondent, for the purposes of narrowing the issues and promoting settlement.

THE HEARING

15. For greater certainty, the Respondent has the right to be represented by counsel, or to act on his own behalf in any hearing under this Code.
16. The Panel, on application at any time by Presenting Counsel or by the Respondent, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the Panel which are relevant to the subject matter of the hearing and admissible at the hearing.
 - (1) A summons issued under this section shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.
17. The hearing shall be conducted by a Panel of members of the Council composed of members who have not participated in a complaint sub-committee investigation of the complaint or in a Panel reviewing a report from such complaint sub-committee.
 - (1) The following guidelines apply to the conduct of the hearing, unless the Panel, on motion by another party, or on consent requires otherwise.
 - (a) All testimony shall be under oath or affirmation or promise.
 - (b) Presenting Counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing by direct examination of witnesses.
 - (c) Counsel for the Respondent may make an opening statement, either immediately following Presenting Counsel's opening statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and after the Respondent has made an opening statement, the Respondent may present evidence.
 - (d) All witnesses may be cross-examined by counsel for the opposite party and re-examined as required.

- (e) The hearing shall be recorded verbatim and transcribed where requested. Where counsel for the Respondent requests, he or she may be provided with a transcript of the hearing within a reasonable time and at no cost.
- (f) Both Presenting Counsel and the Respondent may submit to the Panel proposed findings, conclusions, recommendations or draft orders for the consideration of the Hearing Panel.
- (g) Presenting Counsel and counsel for the Respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, in the order to be determined by the Hearing Panel.

PRE-HEARING RULINGS

18. Either party to the hearing may, by motion, not later than 10 days before the date set for commencement of the hearing, bring any procedural or other matters to the Hearing Panel as are required to be determined prior to the hearing of the complaint.

- (1) Without limiting the generality of the foregoing, a motion may be made for any of the following purposes:
 - (a) objecting to the jurisdiction of the Council to hear the complaint;
 - (b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the Panel;
 - (c) objecting to the sufficiency of disclosure by Presenting Counsel;
 - (d) determining any point of law for the purposes of expediting the hearing; or
 - (e) determining any claim of privilege in respect of the evidence to be presented at the hearing; or
 - (f) any matters relating to scheduling.

(2) A motion seeking any of the relief enumerated in this section may not be brought during the hearing, without leave of the Hearing Panel, unless it is based upon the manner in which the hearing has been conducted.

(3) The Hearing Panel, may, on such grounds as it deems appropriate, abridge the time for bringing any motion provided for by the pre-hearing rules.

19. The Council shall, as soon as is reasonably possible, appoint a time and a place for the hearing of submissions by both sides on any motion brought pursuant to subsection 19(1), and shall, as soon as is reasonably possible, render a decision thereon.

POST-HEARINGS

Disposition at Hearing

DISPOSITION

After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may

- a) warn the judge;
- b) reprimand the judge;
- c) order the judge to apologize to the complainant or to any other person;
- d) order the judge to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a judge;
- e) suspend the judge with pay, for any period;
- f) suspend the judge without pay, but with benefits, for a period up to thirty days; or
- g) recommend to the Attorney General that the judge be removed from office (in accordance with section 51.8).

subs. 51.6(11)

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – POST-HEARINGS

COMBINATION OF SANCTIONS

The Judicial Council may adopt any combination of the foregoing sanctions except that the recommendation to the Attorney General that the judge be removed from office will not be combined with any other sanction.

subs. 51.6(12)

Report to Attorney General

REPORT

The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition (subject to any orders made about confidentiality of documents by the Judicial Council) and the Attorney General may make the report public if he/she is of the opinion this would be in the public interest.

subs. 51.6(18)

IDENTITY WITHHELD

If a complainant or witness asked that their identity be withheld during the hearing and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with the criteria established by the Judicial Council under subsection 51.6(8) (please see page B – 11 above).

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council (please see page B – 11 above) and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

Order to Accommodate

If the effect of a disability on the judge's performance of the essential duties of judicial office is a factor in a complaint, which is either dismissed or disposed of in any manner short of recommending to the Attorney General that the judge be removed, and the judge would be able to perform the essential duties of judicial office if his or her needs were accommodated, the Judicial Council shall order the judge's needs to be accommodated to the extent necessary to enable him or her to perform those duties.

Such an order to accommodate may not be made if the Judicial Council is satisfied that making the order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The Judicial Council shall also not make an order to accommodate against a person without ensuring that the person has had an opportunity to participate and make submissions.

An order made by the Judicial Council to accommodate a judge's needs binds the Crown.

subs. 51.6(13), (14), (15), (16) and (17)

Removal from Office

REMOVAL

A provincially-appointed judge may be removed from office only if:

- a) a complaint about the judge has been made to the Judicial Council; and
- b) the Judicial Council after hearing recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPENSATION

hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),

(ii) conduct that is incompatible with the due execution of his or her office, or

(iii) failure to perform the duties of his or her office.

subs. 51.8(1)

TABLING OF RECOMMENDATION

The Attorney General shall table the Judicial Council's recommendation in the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of its next session.

subs. 51.8(2)

ORDER REMOVING JUDGE

An order removing a provincially-appointed judge from office may be made by the Lieutenant Governor on the address of the Legislative Assembly.

subs. 51.8(3)

APPLICATION

This section applies to provincially-appointed judges who have not yet attained retirement age and to provincially-appointed judges whose continuation in office after attaining retirement age has been approved by the Chief Justice of the Ontario Court of Justice. This section also applies to a Chief, or Associate Chief Justice who has been continued in office by the Judicial Council, either as a Chief, or Associate Chief Justice of the Ontario Court of Justice, or who has been continued in office as a judge by the Judicial Council.

subs. 51.8(4)

COMPENSATION

AFTER COMPLAINT DISPOSED OF

When the Judicial Council has dealt with a complaint against a provincially-appointed judge, it shall consider whether the judge should be compensated for all or part of his or her costs for legal services incurred in connection with the steps taken in relation to the complaint, including review and investigation of a

complaint by a complaint subcommittee, review of a complaint subcommittee's report by the Judicial Council, or a review panel thereof, review of a mediator's report by the Judicial Council, or a review panel thereof, the hearing into a complaint by the Judicial Council, or a hearing panel thereof, and legal services incurred in connection with the question of compensation. The Judicial Council's consideration of the question of compensation shall be combined with a hearing into a complaint, if one is held.

subs. 51.7(1) and (2)

PUBLIC OR PRIVATE

If a hearing was held and was public, the consideration of the compensation question shall be public; otherwise, the consideration of the question of compensation shall take place in private.

subs. 51.7(3)

RECOMMENDATION

If the Judicial Council is of the opinion that the judge should be compensated, it shall make such a recommendation to the Attorney General, indicating the amount of compensation.

subs. 51.7(4)

WHERE COMPLAINT DISMISSED AFTER A HEARING

If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount of compensation.

subs. 51.7(5)

DISCLOSURE OF NAME

The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the judge's name unless there was a public hearing into the complaint or the Judicial Council has otherwise made the judge's name public.

subs. 51.7(6)

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – CONFIDENTIALITY AND PROTECTION OF PRIVACY

AMOUNT AND PAYMENT

The amount of compensation recommended to be paid may relate to all, or part, of the judge's costs for legal services and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General shall pay compensation to the judge in accordance with the recommendation.

subs. 51.7(7) and (8)

CONFIDENTIALITY AND PROTECTION OF PRIVACY

INFORMATION TO PUBLIC

At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it.

subs. 51.3(5)

POLICY OF JUDICIAL COUNCIL

The complaint subcommittee's investigation into a complaint shall be conducted in private, and its report about a complaint or referral of a complaint to the Judicial Council, or a review panel thereof, is considered in private, in accordance with subsections 51.4(6) and 51.4(17) and (18). It is the policy of the Judicial Council, made pursuant to subsections 51.4(21) and (22), that it will not confirm or deny that a particular complaint has been made to it, as permitted by subsection 51.3(5), unless the Judicial Council, or a hearing panel thereof, has determined that there will be a public hearing into the complaint.

COMPLAINT SUBCOMMITTEE INVESTIGATION PRIVATE

The investigation into a complaint by a complaint subcommittee shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(6) and (7)

REVIEW PANEL DELIBERATION PRIVATE

The Judicial Council, or a review panel thereof, shall: –

- consider the complaint subcommittee's report, in private, and may approve its disposition, or
- may require the complaint subcommittee to refer the complaint to the Council.

subs. 51.4(17)

If a complaint is referred to it by a complaint subcommittee, the Judicial Council, or a Review Panel thereof, shall consider such complaint, in private, and may:

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Judge (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(18)

WHEN IDENTITY OF JUDGE REVEALED TO REVIEW PANEL

If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council or a review panel thereof, and such a complaint will be considered in private.

subs. 51.4(16) and (17)

HEARINGS MAY BE PRIVATE

If the Judicial Council determines, in accordance with criteria established under subsection 51.1(1) that the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, it may hold all or part of a hearing in private.

subs. 51.6(7)

JUDGE'S NAME NOT DISCLOSED

If a hearing is held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1(1) that there are exceptional circumstances, order the judge's name not be disclosed or made public.

subs. 51.6(8)

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT –
CONFIDENTIALITY AND PROTECTION OF PRIVACY

ORDER PROHIBITING PUBLICATION

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

CRITERIA ESTABLISHED

For the criteria established by the Judicial Council under subsection 51.1(1) with respect to subsections 51.6(7), (8) and (10), please see page B – 11 above.

REPORT TO ATTORNEY GENERAL

If a complainant or witness asked that their identity be withheld during the hearing, and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with criteria established under subsection 51.6(8).

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

ORDER NOT TO DISCLOSE

The Judicial Council or a complaint subcommittee may order that any information or documents relating

to a mediation or a Judicial Council meeting or hearing that was not held in public, whether the information or documents are in the possession of the Judicial Council or of the Attorney General, or of any other person, are confidential and shall not be disclosed or made public.

subs. 49(24) and (25)

EXCEPTION

The foregoing does not apply to information and documents that the *Courts of Justice Act* requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purpose of mediation or a Judicial Council meeting or hearing.

subs. 49(26)

**AMENDMENTS TO THE FREEDOM OF
INFORMATION AND PROTECTION OF
PRIVACY ACT**

Section 65 of the *Freedom of Information and Protection of Privacy Act* is amended by adding the following subsections:

- (4) This *Act* does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation.
- (5) This *Act* does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:
 1. The Judicial Council or its complaint subcommittee has ordered that the record or information in the record not be disclosed or made public.
 2. The Judicial Council has otherwise determined that the record is confidential.
 3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

ACCOMMODATION OF DISABILITIES

APPLICATION FOR ORDER

A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order that such needs be accommodated.

subs. 45.(1)

DUTY OF JUDICIAL COUNCIL

If the Judicial Council finds that a judge is unable, because of a disability, to perform the essential duties of office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 45.(2)

UNDUE HARDSHIP

Subsection 45.(2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

subs. 45.(3)

GUIDELINES AND RULES OF PROCEDURE

In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedures established under subsection 51.1(1).

subs. 45.4(4)

OPPORTUNITY TO PARTICIPATE

The Judicial Council will not make an order to accommodate against a person under subsection 45.(2) without ensuring that the person has had an opportunity to participate and make submissions.

subs. 45.(5)

ORDER BINDS THE CROWN

The order made by the Judicial Council to accommodate a judge's needs binds the Crown.

subs. 45.(6)

CHAIR FOR MEETING

The Chief Justice of Ontario, or designate from the Court of Appeal, shall chair meetings held for the purposes of ordering accommodation.

subs. 49.(8)

CHAIR ENTITLED TO VOTE

The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 49.(10)

QUORUM FOR MEETING

Eight members of the Judicial Council, including the chair, constitute a quorum for the purposes of dealing with an application for accommodation of disabilities. At least half the members present must be judges and at least four members present must be persons who are not judges.

subs. 49.(13)

EXPERT ASSISTANCE

The Judicial Council may engage persons, including counsel, to assist it.

subs. 49.(21)

CONFIDENTIAL RECORDS

The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public. An order of non-disclosure may be made whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person. An order of non-disclosure cannot be made with respect to information and/or documents that the *Courts of Justice Act*

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

subs. 49(24)(25) & (26)

The Judicial Council shall establish and make public rules governing its own procedures, including guidelines and rules of procedure for the purpose of the accommodation of disabilities.

subs. 51.1(1)

ACCOMMODATION ORDER AFTER A HEARING

If, after a hearing into a complaint has been held, the Judicial Council finds that the judge who was the subject of the complaint is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 51.6(13)

RULES OF PROCEDURE AND GUIDELINES

The following are the rules of procedure and guidelines established by the Ontario Judicial Council for the purpose of the accommodation of disabilities.

APPLICATION IN WRITING

An application for accommodation of disability by a judge shall be in writing and shall include the following information: -

- a description of the disability to be accommodated;
- a description of the essential duties of the judge's office for which accommodation is required;
- a description of the item and/or service required to accommodate the judge's disability;
- a signed letter from a qualified doctor or other medical specialist (e.g., chiropractor, physiotherapist, etc.) supporting the judge's application for accommodation;
- the application and supporting materials are inadmissible, without the consent of the appli-

cant, in any investigation or hearing, other than the hearing to consider the question of accommodation;

- disclosure of the application and supporting materials by the Ontario Judicial Council to the public is prohibited without the consent of the applicant.

ACCOMMODATION SUBCOMMITTEE

On receipt of an application, the Council will convene a subcommittee of the Council composed of one judge and one lay member of the Council (an "accommodation subcommittee"). At its earliest convenience the accommodation subcommittee shall meet with the applicant and with any person against whom the accommodation subcommittee believes an order to accommodate may be required, and retain such experts and advice as may be required, to formulate and report an opinion to the Council in relation to the following matters:

- the period of time that the item and/or service would be required to accommodate the judge's disability;
- the approximate cost of the item and/or service required to accommodate the judge's disability for the length of time the item and/or service is estimated to be required (i.e., daily, weekly, monthly, yearly).

REPORT OF ACCOMMODATION SUBCOMMITTEE

The report to the Council shall consist of all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

If, after meeting with the applicant, the accommodation subcommittee is of the view that the applicant does not suffer from a disability, it shall communicate this fact to the Council in its report.

INITIAL CONSIDERATION OF APPLICATION AND REPORT

The Judicial Council shall meet, at its earliest convenience, to consider the application and the report of the accommodation subcommittee in order to determine whether or not the application for accommodation gives

rise to an obligation under the statute to accommodate the applicant short of undue hardship.

THRESHOLD TEST FOR QUALIFICATION AS DISABILITY

The Judicial Council will be guided generally by Human Rights jurisprudence relating to the definition of “disability” for the purposes of determining whether an order to accommodate is warranted.

The Judicial Council will consider a condition to amount to a disability where it may interfere with the Judge’s ability to perform the essential functions of a judge’s office.

NOTIFICATION OF MINISTER

If the Judicial Council is satisfied that the condition meets the threshold test for qualification as a disability and if the Judicial Council is considering making an order to accommodate same, then the Judicial Council shall provide a copy of the application for accommodation of disability together with the report of the accommodation subcommittee to the Attorney General, at its earliest convenience. The report of the accommodation subcommittee shall include all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

SUBMISSIONS ON UNDUE HARDSHIP

The Judicial Council will invite the Minister to make submissions, in writing, as to whether or not any order that the Council is considering making to accommodate a judge’s disability will cause “undue hardship” to the Ministry of the Attorney General or any other person affected by the said order to accommodate. The Judicial Council will view the Minister, or any other person against whom an order to accommodate may be made, as having the onus of showing that accommodating the applicant will cause undue hardship.

In considering whether accommodation of the applicant will cause undue hardship, the Council will generally be guided by Human Rights jurisprudence relating to

the question whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

TIME FRAME FOR RESPONSE

The Judicial Council shall request that the Minister respond to its notice of the judge’s application for accommodation within thirty (30) calendar days of the date of receipt of notification from the Judicial Council. The Minister will, within that time frame, advise the Judicial Council whether or not the Minister intends to make any response to the application for accommodation. If the Minister does intend to respond, such response shall be made within sixty (60) days of the Minister’s acknowledgement of the notice and advice that the Minister intends to respond. The Judicial Council will stipulate in its notice to the Minister that an order to accommodate will be made in accordance with the judge’s application and the Judicial Council’s initial determination in the absence of any submission or acknowledgement from the Minister.

MEETING TO DETERMINE ORDER TO ACCOMMODATE

After receipt of the Minister’s submissions with respect to “undue hardship” or the expiration of the time period specified in its notice to the Minister, whichever comes first, the Ontario Judicial Council shall meet, at its earliest convenience, to determine the order it shall make to accommodate the judge’s disability. The Judicial Council will consider the judge’s application and supporting material and submissions made, if any, regarding the question of “undue hardship”, before making its determination.

COPY OF ORDER

A copy of the order made by the Judicial Council to accommodate a judge’s disability shall be provided to the judge and to any other person affected by the said order within ten (10) calendar days of the date of the decision being made.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

SPECIAL CONSIDERATIONS

FRENCH-SPEAKING COMPLAINANTS/JUDGES

Complaints against provincially-appointed judges may be made in English or French.

subs. 51.2(2)

A hearing into a complaint by the Judicial Council shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request, to be given before the hearing, French translations of documents that are written in English and are to be considered at the hearing; to be provided with the assistance of an interpreter at the hearing; and to be provided with simultaneous interpretation into French of the English portions of the hearing.

subs. 51.2(3)

This entitlement to translation and interpretation extends to mediation and to the consideration of the question of compensation, if any.

subs. 51.2(4)

The Judicial Council may direct that a hearing or mediation of a complaint where a complainant or witness speaks French, or the complained-of judge speaks French, be conducted bilingually, if the Judicial Council is of the opinion that it can be properly conducted in that manner.

subs. 51.2(5)

A directive under subsection (5) may apply to a part of the hearing or mediation and, in that case, subsections (7) and (8) below apply with necessary modifications.

subs. 51.2(6)

In a bilingual hearing or mediation,

- a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- b) documents may be filed in either language;
- c) in the case of a mediation, discussions may take place in either language;

- d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

subs. 51.2(7)

In a bilingual hearing or mediation, if the complainant or the judge complained-of does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

subs. 51.2(8)

COMPLAINTS AGAINST CHIEF JUSTICE ET AL

If the Chief Justice of the Ontario Court of Justice is the subject of a complaint, the Chief Justice of Ontario shall appoint another judge of the Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice until the complaint is finally disposed of. The Associate Chief Justice appointed to the Judicial Council shall chair meetings and hearings of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice and appoint temporary members of the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(a) and (b)

Any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice (by a complaint subcommittee after its investigation, by the Judicial Council or a review panel thereof after its review of a complaint subcommittee's report or referral or by the Judicial Council after mediation), shall be made to the Chief Justice of the Superior Court of Justice instead of the Chief Justice of the Ontario Court of Justice, until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(c)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, any complaints that would other-

wise be referred to the Chief Justice of the Ontario Court of Justice shall be referred to the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(a)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(b)

If either the Associate Chief Justice or Regional Senior Justice appointed to the Judicial Council is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or Regional Senior Justice, as the case may be, until the complaint against the Associate Chief Justice, or Regional Senior Justice appointed to the Judicial Council, is finally disposed of.

subs. 50(3)

COMPLAINTS AGAINST SMALL CLAIMS COURT JUDGES

Subsection 87.1(1) of the *Courts of Justice Act* applies to provincially-appointed judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, with special provisions.

COMPLAINTS

When the Judicial Council deals with a complaint against a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced

by a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.

2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

subs. 87.1(4)

COMPLAINTS AGAINST MASTERS

Subsection 87.(3) of the *Courts of Justice Act* states that sections 44 to 51.12 applies to masters, with necessary modifications, in the same manner as to provincially-appointed judges.

COMPLAINTS

When the Judicial Council deals with a complaint against a master, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

ADMINISTRATIVE MATTERS

INTAKE/OPENING COMPLAINT FILES:

- Where a complaint is made orally by a person intending to make a complaint to the Judicial Council or a member acting in their capacity as a member of the Judicial Council thereof, the person making the allegation shall be encouraged to make the complaint in writing. If such person does not within 10 days of making the allegation tender a written complaint to the Council, the Registrar shall, on consultation with legal counsel and the Judicial Council member to whom the allegation was made, set out the particulars of the complaint in writing. Such written summary of the allegation shall be forwarded by registered mail to the person making the allegation, if he or she can be located, along with a statement that the allegation as summarized will become the complaint on the basis of which the conduct of the provincially-appointed judge in question will be evaluated. On the tenth day after the mailing of such summary, and in the absence of any response from the person making the allegation, the written summary shall be deemed to be a complaint alleging misconduct against the provincially-appointed judge in question.
- if the complaint is within the jurisdiction of the OJC (any provincially-appointed judge or master – full-time or part-time) a complaint file is opened and assigned to a two-member complaint subcommittee for review and investigation (complaints that are outside the jurisdiction of the OJC are referred to the appropriate agency)
- the Registrar will review each letter of complaint upon receipt and if it is determined that a file will be opened and assigned, the Registrar will determine whether or not it is necessary to order a transcript and/or audiotape for review by the complaint subcommittee and, if so, will direct the Assistant Registrar to order same.
- the complaint is added to the tracking form, a sequential file number is assigned, a letter of acknowledgement is sent to the complainant within a week of his or her letter being received, page one of the complaint intake form is completed

and a letter to the complaint subcommittee members, together with the Registrar's recommendations regarding the file, if any, is prepared. Copies of all materials are placed in the office copy and each member's copy of the complaint file.

Status reports on all open complaint files – with identifying information removed – is provided to each member of the OJC at each of its regular meetings.

COMPLAINT SUBCOMMITTEES:

Complaint subcommittee members endeavour to review the status of all opened files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

A letter advising the complaint subcommittee members that they have had a new case assigned to them is sent to the complaint subcommittee members, for their information, within a week of the file being opened and assigned. The complaint subcommittee members are contacted to determine if they want their copy of the file delivered to them or kept in their locked filing cabinet drawer in the OJC office. If files are delivered, receipt of the file by the member is confirmed. Complaint subcommittee members may attend at the OJC office to examine their files during regular office hours.

Complaint subcommittee members will endeavour to review and discuss their assigned files within a month of receipt of the file. All material (transcripts, audio-tapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, and not by individual complaint subcommittee members.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved.

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at a hearing.

Transcripts and/or audiotapes of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless the members advise otherwise.

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint.

subs. 51.4(5)

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint subcommittee are ready to be reported to a review panel. The complaint subcommittee will also provide a legible, fully completed copy of pages

2 and 3 of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration. No information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

At least one member of a complaint subcommittee shall be present when the subcommittee's report is made to a review panel. Complaint subcommittee members may also attend by teleconference when necessary.

REVIEW PANELS:

The chair of the review panel shall ensure that at least one copy of the relevant page of the complaint intake form is completed and provided to the Registrar at the conclusion of the review panel hearing.

MEETING MATERIALS:

All material prepared for meetings of the Ontario Judicial Council are confidential and shall not be disclosed or made public.

When a complaint subcommittee has indicated that it is ready to make a report to a review panel, the Registrar will prepare and circulate a draft case summary and a draft letter to the complainant to the members of the complaint subcommittee making the report and the members of the review panel assigned to hear the complaint subcommittee's report. The draft case summary and draft letter to the complainant will be circulated to the members for their review at least a week prior to the date of the scheduled Judicial Council meeting. Amendments to the draft case summary and the draft letter to the complainant may be made after discussion by the Judicial Council members at the meeting held to consider the complaint subcommittee's recommendation on individual complaint files.

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

The draft and final case summary and the draft letter to the complainant which is submitted for approval will not contain any information which would identify either the complainant or the subject judge.

A copy of the final case summary is filed in every closed complaint file together with a copy of the final letter to the complainant advising of the disposition of the complaint.

NOTICE OF DECISION – NOTIFICATION OF PARTIES:

After the draft letter to the complainant has been approved, by the investigating complaint subcommittee and the review panel, it is prepared in final form and sent to the complainant.

Complainants, in cases where their complaint is dismissed, are given notice of the decision of the OJC, with reasons, as required by subsection 51.4(2) of the *Courts of Justice Act*.

The OJC has distributed a waiver form for all judges to sign and complete, instructing the OJC of the circumstances in which an individual judge wishes to be advised of complaints made against them, which are dismissed. The OJC has also distributed an address form for all judges to sign and complete, instructing the OJC of the address to which correspondence about complaint matters should be sent.

Judges who had been asked for a response to the complaint, or who, to the knowledge of the OJC are otherwise aware of the complaint, will be contacted by telephone after the complaint has been dealt with and advised of the decision of the OJC. A letter confirming the disposition of the complaint will also be sent to the judge, in accordance with his/her instructions.

CLOSING FILES:

Once the parties have been notified of the OJC's decision, the original copy of the complaint file is marked "closed" and stored in a locked filing cabinet. Complaint subcommittee members return their copies of the file to the Registrar to be destroyed or advise, in writing, that they have destroyed their copy of the complaint file. If a member's copy of the complaint file, or written notice of the file's destruction, is not received within two weeks after the review panel meeting, OJC staff will contact the complaint subcommittee member, to remind him or her to destroy his or her copy of the complaint file, and provide written notice, or arrange to have the file returned to the OJC, by courier, for shredding.



APPENDIX-C

ONTARIO COURT OF JUSTICE
CONTINUING EDUCATION PLAN

ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

The Continuing Education Plan for the Ontario Court of Justice has the following goals:

1. Maintaining and developing professional competence.
2. Maintaining and developing social awareness.
3. Encouraging personal growth.

The Plan provides each judge with an opportunity of having approximately ten days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, *Charter of Rights*, skills training and social context. While many of the programs attended by the judges of the Ontario Court of Justice are developed and presented by the judges of the Court themselves, frequent use is made of outside resources in the planning and presentation of programs. Lawyers, government and law enforcement officials, academics, and other professionals have been used extensively in most education programs. In addition, judges are encouraged to identify and attend external programs of interest and benefit to themselves and the Court.

EDUCATION SECRETARIAT

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Justice as Chair (ex officio), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. The Ontario Court of Justice's research counsel serve as consultants. The Secretariat meets approximately five times per year to discuss matters pertaining to education and reports to the Chief Justice. The mandate and goals of the Education Secretariat are as follows:

The Education Secretariat is committed to the importance of education in enhancing professional excellence.

It is the mandate of the Education Secretariat to promote educational experiences that encourage judges to be reflective about their professional practices, to increase their substantive knowledge, and to engage in ongoing, lifelong and self-directed learning.

To meet the needs of an independent judiciary, the Education Secretariat will:

- Promote education as a way to encourage excellence; and
- Support and encourage programs which maintain and enhance social, ethical and cultural sensitivity.

The goals of the Education Secretariat are:

1. To stimulate continuing professional and personal development;
2. To ensure that education is relevant to the needs and interests of the provincial judiciary;
3. To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure and substantive law;
4. To increase knowledge and awareness of community and social services structures and resources that may assist and complement educational programs and the work of the courts;
5. To foster the active recruitment and involvement of the judiciary at all stages of program conceptualization, development, planning, delivery and evaluation;
6. To promote an understanding of judicial development;
7. To facilitate the desire for life-long learning and reflective practices;

APPENDIX – C

ONTARIO COURT OF JUSTICE – CONTINUING EDUCATION PLAN

8. To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and
9. To evaluate the educational process and programs.

The Education Secretariat provides administrative and logistical support for the education programs presented within the Ontario Court of Justice. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

The current education plan for judges of the Ontario Court of Justice is divided into two parts;

1. First Year Education,
2. Continuing Education.

1. FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice is provided with certain texts and materials upon appointment including:

- *Commentaries on Judicial Conduct (Canadian Judicial Council)*
- *Family Law Statutes of the Ontario Court of Justice*
- *The Conduct of a Trial*
- *The Conduct of a Family Law Trial*
- *Judge's Manual*
- *Family Law Rules*
- *Writing Reasons*
- *Ethical Principles for Judges (Canadian Judicial Council)*
- *The Finder*
- *The Sentencing Finder*

The Ontario Court of Justice organizes a one-day education program for newly-appointed judges shortly after their appointment which deals with practical matters relating to the transition to the

bench, including judicial conduct and judicial ethics, courtroom demeanour and behaviour, available resources, etc. This program is presented at the Office of the Chief Justice twice a year.

Upon appointment, each new judge is assigned by the Chief Justice to one of the seven regions of the Province. The Regional Senior Judge for that region is then responsible for assigning and scheduling the new judge within the region. Depending on the new judge's background and experience at the time of appointment, the Regional Senior Judge will assign the newly-appointed judge for a period of time (usually several weeks prior to swearing-in) to observe senior, more experienced judges and/or specific courtrooms. During this period, the new judge sits in the courtroom, attends in chambers with experienced judges and has an opportunity to become familiar with their new responsibilities.

During the first year following appointment, or so soon thereafter as is possible, new judges attend the New Judges' Training Program presented by the Canadian Association of Provincial Court judges (C.A.P.C.J.) at Carling Lake in the Province of Quebec. This intensive one-week program is practical in nature and is oriented principally to the area of criminal law, with some reference to areas of family law.

In November, 2004 the Ontario Court of Justice and the National Judicial Institute jointly presented a New Judges Skills-Based program at Niagara-on-the-Lake for 28 newly appointed provincial judges from across Canada. The program included sessions on the delivery of judgments both written and oral, communication skills and the effective conduct of a judicial pre-trial. Twelve newly appointed judges from the Ontario Court of Justice attended this program which will be repeated in November, 2005.

Judges in the first year of appointment are also encouraged to attend all education programs relating to their field(s) of specialization presented by the Ontario Court of Justice (These programs are outlined under the heading "Continuing Education").

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Each judge at the time of appointment is invited to participate in a mentoring program which has been developed within the Ontario Court of Justice by the Ontario Conference of Judges and funded through the Education Secretariat. New judges also have the opportunity (as do all judges) to discuss matters of concern or interest with their peers at any time.

All judges from the date of their appointment have equal access to a number of resources that impact directly or indirectly upon the work of the Ontario Court of Justice, including legal texts, case reporting services, the Ontario Court of Justice Centre for Judicial Research and Education (discussed below), computer courses and courses in *Quicklaw* (a computer law database and research facility).

2. CONTINUING EDUCATION

Continuing education programs presented to judges of the Ontario Court of Justice are of two types;

- 1) Programs presented by the Ontario Conference of Judges usually of particular interest to judges in the fields of criminal or family law respectively;
- 2) Programs presented by the Education Secretariat.

I. PROGRAMS PRESENTED BY THE ONTARIO CONFERENCE OF JUDGES

The programs presented by the Ontario Conference of Judges constitute the Core Program of the Ontario Court of Justice education programming. The Ontario Conference of Judges has two Education Committees (criminal and family) composed of a number of judges. The chair of each committee is nominated by the Ontario Conference of Judges to be on the Education Secretariat. These committees meet as required and work throughout the year on the planning, development and presentation of the core education programs.

The Ontario Conference of Judges presents three education programs in the area of family law, one each in January (the Judicial Development Institute), May (in conjunction with the Annual meeting of the Court) and September. Generally speaking, the principal topics are a) Child Welfare, and b) Family Law (custody, access and support). Additional topics involving skills development, case management, leg-

islative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days duration and is open to any judge who spends a significant amount of his or her time presiding over family law matters.

There are also two major criminal law programs presented each year.

- a) A three-day Regional Seminar is organized in October and November of each year at four regional locations. These seminars customarily focus on areas of sentencing, Youth Criminal Justice and the law of evidence, although a variety of other topics may also be included. Similar programs are presented in each of the four regional locations.
- b) A two and a half day education seminar is presented in the month of May in conjunction with the annual meeting of the Court.

All judges presiding in criminal law courts are entitled and encouraged to attend these seminars.

II. SECRETARIAT PROGRAMS

The programs that are planned and presented by the Education Secretariat tend to deal with subject matter that is neither predominantly criminal nor family, or that can be presented on more than one occasion to different groups of judges.

1. JUDGMENT WRITING: This two-day seminar is presented to a group of approximately 10 judges at a time as funding permits. Lately two seminars have been presented in February of each year at the Office of the Chief Justice by Professor Edward Berry of the University of Victoria.

In February 2005 the Judgment Writing Program will be replaced by an Oral Judgment Program which was developed by the National Judicial Institute and features Professor Berry together with judges of the Ontario Court of Appeal as presenters. This program was presented at the Annual Conference to 25 judges of the Court and to the 12 judges who attended the New Judges Skills-Based Program. A further 25 judges have registered for the February 2005 program in

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Toronto. It is anticipated that after most judges have attended an Oral Judgment Program the Court will be able to alternate Written and Oral Judgment programs in future years.

In the 1997/98 fiscal year the Education Secretariat contracted with Professor Berry to prepare a text in judgment writing for all judges of the Court entitled, *Writing Reasons*. That text has now been prepared and distributed to all judges of the Court and is now in its second edition.

2. PRE-RETIREMENT SEMINARS: Intended to assist judges in their retirement planning (together with their spouses), this two and one-half day program deals with the transition from the bench to retirement and is presented in Toronto whenever numbers warrant.
3. JUDICIAL COMMUNICATION PROGRAM. In March, 1998, the Ontario Court of Justice retained the services of Professor Gordon Zimmerman together with Professor Alayne Casteel of the University of Nevada to present a training program on Judicial Communication. The program involved directed activities and discussion on verbal and non-verbal communications, listening and related problems. Individual judges were videotaped and their communication techniques were critiqued in the course of the program. The program, which was presented to 25 Ontario Court of Justice judges, was intended to serve as a pilot project for future seminars on judicial communication, which will be presented as funding and scheduling permits. The Secretariat put on the first of these seminars in March, 2000. It was attended by 16 judges of the Ontario Court of Justice and 2 from the Canadian Association of Provincial Court Judges who were invited to observe and participate in order to assess the program for use in other provinces. This program was organized, developed and presented by Professor Neil Gold and his associate Frank Borowicz who adapted the pilot project to the specific role of a trial judge in a Canadian court. The program was presented again in March, 2002 to another 21 judges of the Ontario Court of Justice.

From June 2 to June 4, 2003 the Court in Partnership with the National Judicial Institute developed a Courtroom Communications Workshop presented at Stratford. The focus of the seminar was on communications skills in the courtroom. Judges learned and practiced specific techniques in realistic exercises designed to simulate difficult courtroom situations. They had an opportunity to learn about their own communications style and how to improve it, with coaches from the theatre and other communication professionals. Twelve judges from the Court were selected to attend the program together with an equal number of federally appointed judges. The program was presented again in Stratford in June, 2004 and is scheduled to be repeated in June, 2005.

4. SOCIAL CONTEXT PROGRAMS: The Ontario Court of Justice has presented significant programs dealing with social context. The first such program, entitled *Gender Equity*, was presented in the fall of 1992. That program used professional and community resources in its planning and presentation phases. A number of Ontario Court of Justice judges were trained as facilitators for the purposes of the program during the planning process, which lasted over 12 months. Extensive use was made of videos and printed materials which form a permanent reference. The facilitator model has since been used in a number of Ontario Court of Justice Education Programs.

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled *The Court in an Inclusive Society*, was intended to provide information about the changing nature of our society, to determine the impact of the changes and to equip the Court to respond better to those changes. A variety of pedagogical techniques including large and small group sessions were used in the course of the program. A group of judge facilitators were specifically trained for this program which was presented following significant community consultation.

In September 2000 the Ontario Conference of

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Judges and the Canadian Association of Provincial Court Judges met in Ottawa for a combined conference which covered, *inter alia*, poverty issues and, in addition, issues related to aboriginal justice.

At the Court's Annual Meeting in 2003, the theme of the education program was "Access to Justice". The vehicle of a play followed by a panel discussion was used to describe issues of literacy, race, poverty, neglect, abuse and violence in the home affecting access to justice. Another session used lectures, videos, panel discussions and small group work to explore the issue of literacy and the courts in a meaningful way.

As part of the Court's commitment to social context education, the Ontario Conference of Judges has created an *ad hoc* equality committee to ensure that social context issues are included and addressed on an on-going basis in the education programs of the Conference.

5. UNIVERSITY EDUCATION PROGRAM. This program takes place over a five-day period in the spring in a university or similar setting. It provides an opportunity for approximately 30 judges to deal in depth with criminal law education topics in a more academic context. The same program, with some modification, is presented each year over a three-year period to enable a larger number of judges to receive the same benefits of the program.

III.EXTERNAL EDUCATION PROGRAMS

The Education Secretariat has established a Conference Attendance Committee to consider applications by individual judges for funding to attend conferences/seminars/programs other than those presented by the Ontario Court of Justice. Funding, when provided, is usually less than 100% since it is designed to provide supplementary assistance to judges who are prepared to commit some of their own resources to attend.

1. FRENCH-LANGUAGE COURSES: Judges of the Ontario Court of Justice who are proficient in French may attend courses presented by the Office of the Commissioner for Federal Judicial Affairs. The frequency and duration of the

courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of courses: (a) Terminology courses for francophone judges; (b) Terminology courses for anglophone (bilingual) judges.

2. OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including:
 - Canadian Association of Provincial Court Judges
 - National Judicial Institute
 - Federation of Law Societies: Criminal (Substantive Law/Procedure/Evidence) & Family Law
 - International Association of Juvenile and Family Court Magistrates
 - Canadian Bar Association
 - Criminal Lawyers' Association
 - Advocate's Society
 - Ontario Association for Family Mediation/Mediation Canada
 - Canadian Institute for the Administration of Justice
 - International Association of Women Judges (Canadian Chapter)
 - Ontario Family Court Clinic Conference
 - Canadian Institute for Advanced Legal Studies (Cambridge Lectures)
3. COMPUTER COURSES: The Ontario Court of Justice, through a tendered contract with a training vendor previously organized a series of computer training courses for judges of the Ontario Court of Justice. These courses were organized according to skill level and geographic location and presented at different times throughout the Province. Judges typically attended at the offices of the

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training vendor for courses in computer operation, word-processing and data storage and retrieval. Other courses were and are presented in the use of *Quicklaw* (the computer law database and research facility).

As the Desktop Computer Implementation (D.C.I.) Project was implemented across the justice system in Ontario, starting in the summer of 1998, computer training for judges was significantly increased by the Project in order to ensure appropriate levels of computer literacy for all members of the Court.

4. NATIONAL JUDICIAL INSTITUTE (N.J.I.): The Ontario Court of Justice through its Education Secretariat makes a financial contribution to the operation of the National Judicial Institute. The N.J.I., based in Ottawa, sponsors a number of education programs across the country for federally and provincially appointed judges. Individual judges have attended and will continue to attend N.J.I. programs in the future, depending on location and subject matter. The Chief Justice is a member of the Board of the N.J.I.

The Ontario Court of Justice has entered into a joint venture with the N.J.I., which resulted in the hiring of an Education Director for the Ontario Court of Justice who is also responsible for the coordination and development of programs for Provincial judges in other provinces.

In September 2002 the Ontario Court of Justice and the National Judicial Institute jointly presented a conference on Child Welfare Law that was attended by both federal and provincial judges from across the country. The Ontario Court of Justice and the N.J.I. have also jointly presented the annual Courtroom Skills Program in Stratford and, most recently, the New Judges Skills-Based at Niagara-on-the-Lake.

IV. OTHER EDUCATIONAL RESOURCES

1. CENTRE FOR JUDICIAL RESEARCH AND EDUCATION: Judges of the Ontario Court of Justice have access to the Ontario Court of Justice Centre for Judicial Research and Education located at Old City Hall in Toronto. The Centre, a law library and computer research

facility, is staffed by three research counsel together with support staff and is accessible in person, by telephone, E-mail or fax. The Centre responds to specific requests from judges for research and, in addition, provides updates with respect to legislation and relevant case law through its regular publication *'Items of Interest'*. Counsel at the Centre attend meetings of the Education Secretariat and take part in seminars and programs presented by the Conference of Judges and Education Secretariat.

2. RECENT DEVELOPMENTS: The Honourable Mr. Justice Ian MacDonnell also provides judges of the Ontario Court of Justice with his summary and comments on current criminal law decisions of the Ontario Court of Appeal and of the Supreme Court of Canada in a publication entitled *'Recent Developments'*.
3. SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.
4. REGIONAL MEETINGS: The current seven regions of the Court have annual regional meetings. While these meetings principally provide an opportunity to deal with regional administrative/management issues, some also have an educational component. Such is the case, for example, with the northern regional meeting in which judges of the Northeast and Northwest Regions meet together and deal with educational issues of special interest to the north, such as judicial isolation, travel and aboriginal justice.
5. In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected *inter alia* through continuing peer discussions and individual reading and research.



APPENDIX-D

COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

The following excerpt from the *Courts of Justice Act*, c.43 should not be relied on as the authoritative text. The authoritative text is set out in the official volumes and in office consolidations printed by Publications Ontario.

COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

SECTION 49

JUDICIAL COUNCIL

49. (1) The Ontario Judicial Council is continued under the name Ontario Judicial Council in English and Conseil de la magistrature de l'Ontario in French.

COMPOSITION

- (2) The Judicial Council is composed of,
 - (a) the Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice;
 - (b) the Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, and the Associate Chief Justice of the Ontario Court of Justice;
 - (c) a regional senior judge of the Ontario Court of Justice, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation;
 - (d) two judges of the Ontario Court of Justice, appointed by the Chief Justice;
 - (e) the Treasurer of The Law Society of Upper Canada, or another bencher of the Law Society who is a lawyer, designated by the Treasurer;
 - (f) a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society;
 - (g) four persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

TEMPORARY MEMBERS

(3) The Chief Justice of the Ontario Court of Justice may appoint a judge of that division to be a temporary member of the Judicial Council in the place of another provincial judge, for the purposes of dealing with a complaint, if the requirements of subsections (13), (15), (17), (19) and (20) cannot otherwise be met.

CRITERIA

(4) In the appointment of members under clauses (2) (d), (f) and (g), the importance of reflecting, in the composition of the Judicial Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

TERM OF OFFICE

(5) The regional senior judge who is appointed under clause (2) (c) remains a member of the Judicial Council until he or she ceases to hold office as a regional senior judge.

Same

(6) The members who are appointed under clauses (2) (d), (f) and (g) hold office for four-year terms and shall not be reappointed.

STAGGERED TERMS

(7) Despite subsection (6), one of the members first appointed under clause (2) (d) and two of the members first appointed under clause (2) (g) shall be appointed to hold office for six-year terms.

CHAIR

(8) The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the meetings and hearings of the Judicial Council that deal with complaints against particular judges and its meetings held for the purposes of section 45 and subsection 47 (5).

Same

(9) The Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, shall chair all other meetings and hearings of the Judicial Council.

Same

(10) The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

OPEN AND CLOSED HEARINGS AND MEETINGS

(11) The Judicial Council's hearings and meetings under sections 51.6 and 51.7 shall be open to the public, unless subsection 51.6 (7) applies; its other hearings and meetings may be conducted in private, unless this *Act* provides otherwise.

VACANCIES

(12) Where a vacancy occurs among the members appointed under clause (2) (d), (f) or (g), a new member similarly qualified may be appointed for the remainder of the term.

COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

QUORUM

(13) The following quorum rules apply, subject to subsections (15) and (17):

1. Eight members, including the chair, constitute a quorum.
2. At least half the members present must be judges and at least four must be persons who are not judges.

REVIEW PANELS

(14) The Judicial Council may establish a panel for the purpose of dealing with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

Same

(15) The following rules apply to a panel established under subsection (14):

1. The panel shall consist of two provincial judges other than the Chief Justice, a lawyer and a person who is neither a judge nor a lawyer.
2. One of the judges, as designated by the Judicial Council, shall chair the panel.
3. Four members constitute a quorum.

HEARING PANELS

(16) The Judicial Council may establish a panel for the purpose of holding a hearing under section 51.6 and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

Same

(17) The following rules apply to a panel established under subsection (16):

1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.
2. At least one member must be a person who is neither a judge nor a lawyer.
3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.
4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.

5. All the members of the panel constitute a quorum.

CHAIR

(18) The chair of a panel established under subsection (14) or (16) is entitled to vote, and may cast a second deciding vote if there is a tie.

PARTICIPATION IN STAGES OF PROCESS

(19) The members of the subcommittee that investigated a complaint shall not,

- (a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or
- (b) participate in a hearing of the complaint under section 51.6.

Same

(20) The members of the Judicial Council who dealt with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) shall not participate in a hearing of the complaint under section 51.6.

EXPERT ASSISTANCE

(21) The Judicial Council may engage persons, including counsel, to assist it.

SUPPORT SERVICES

(22) The Judicial Council shall provide support services, including initial orientation and continuing education, to enable its members to participate effectively, devoting particular attention to the needs of the members who are neither judges nor lawyers and administering a part of its budget for support services separately for that purpose.

Same

(23) The Judicial Council shall administer a part of its budget for support services separately for the purpose of accommodating the needs of any members who have disabilities.

CONFIDENTIAL RECORDS

(24) The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public.

Same

(25) Subsection (24) applies whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person.

COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

EXCEPTIONS

- (26) Subsection (24) does not apply to information and documents,
- (a) that this *Act* requires the Judicial Council to disclose; or
- (b) that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

PERSONAL LIABILITY

(27) No action or other proceeding for damages shall be instituted against the Judicial Council, any of its members or employees or any person acting under its authority for any act done in good faith in the execution or intended execution of the Council's or person's duty.

REMUNERATION

(28) The members who are appointed under clause (2) (g) are entitled to receive the daily remuneration that is fixed by the Lieutenant Governor in Council.

SECTION 50

COMPLAINT AGAINST CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

- 50. (1) If the Chief Justice of the Ontario Court of Justice is the subject of a complaint,
- (a) the Chief Justice of Ontario shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of;
- (b) the Associate Chief Justice of the Ontario Court of Justice shall chair meetings and hearings of the Council instead of the Chief Justice of the Ontario Court of Justice, and make appointments under subsection 49 (3) instead of the Chief Justice, until the complaint is finally disposed of; and
- (c) any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice under clause 51.4 (13) (b) or 51.4 (18) (c), subclause 51.5 (8) (b) (ii) or clause 51.5 (10) (b) shall be made to the Chief Justice of the Superior Court of Justice instead of to the Chief Justice of the Ontario Court of Justice.

SUSPENSION OF CHIEF JUSTICE

- (2) If the Chief Justice of the Ontario Court of Justice is suspended under subsection 51.4 (12),
- (a) complaints that would otherwise be referred to the Chief Justice of the Ontario Court of Justice under clauses 51.4 (13) (b) and 51.4 (18) (c), subclause 51.5 (8) (b) (ii) and clause 51.5 (10) (b) shall be referred to the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of; and
- (b) annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of.

COMPLAINT AGAINST ASSOCIATE CHIEF JUSTICE OR REGIONAL SENIOR JUDGE

(3) If the Associate Chief Justice of the Ontario Court of Justice or the regional senior judge appointed under clause 49 (2) (c) is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or regional senior judge, as the case may be, until the complaint is finally disposed of.

SECTION 51

PROVISION OF INFORMATION TO PUBLIC

51. (1) The Judicial Council shall provide, in court-houses and elsewhere, information about itself and about the justice system, including information about how members of the public may obtain assistance in making complaints.

Same

(2) In providing information, the Judicial Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities.

ASSISTANCE TO PUBLIC

(3) Where necessary, the Judicial Council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints.

COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

TELEPHONE ACCESS

(4) The Judicial Council shall provide province-wide free telephone access, including telephone access for the deaf, to information about itself and its role in the justice system.

PERSONS WITH DISABILITIES

(5) To enable persons with disabilities to participate effectively in the complaints process, the Judicial Council shall ensure that their needs are accommodated, at the Council's expense, unless it would impose undue hardship on the Council to do so, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

ANNUAL REPORT

(6) After the end of each year, the Judicial Council shall make an annual report to the Attorney General on its affairs, in English and French, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the judge or the complainant.

TABLING

(7) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly.

SECTION 51.1

RULES

51.1 (1) The Judicial Council shall establish and make public rules governing its own procedures, including the following:

1. Guidelines and rules of procedure for the purpose of section 45.
2. Guidelines and rules of procedure for the purpose of subsection 51.4 (21).
3. Guidelines and rules of procedure for the purpose of subsection 51.4 (22).
4. If applicable, criteria for the purpose of subsection 51.5 (2).
5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5 (13).

6. Rules of procedure for the purpose of subsection 51.6 (3).
7. Criteria for the purpose of subsection 51.6 (7).
8. Criteria for the purpose of subsection 51.6 (8).
9. Criteria for the purpose of subsection 51.6 (10).

REGULATIONS ACT

(2) The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

SECTIONS 28, 29 AND 33 OF SPPA

(3) Sections 28, 29 and 33 of the *Statutory Powers Procedure Act* do not apply to the Judicial Council.

SECTION 51.2

USE OF OFFICIAL LANGUAGES OF COURTS

51.2 (1) The information provided under subsections 51 (1), (3) and (4) and the matters made public under subsection 51.1 (1) shall be made available in English and French.

Same

(2) Complaints against provincial judges may be made in English or French.

Same

(3) A hearing under section 51.6 shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request,

- (a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;
- (b) to be provided with the assistance of an interpreter at the hearing; and
- (c) to be provided with simultaneous interpretation into French of the English portions of the hearing.

Same

(4) Subsection (3) also applies to mediations conducted under section 51.5 and to the Judicial Council's consideration of the question of compensation under section 51.7, if subsection 51.7 (2) applies.

BILINGUAL HEARING OR MEDIATION

(5) The Judicial Council may direct that a hearing or mediation to which subsection (3) applies be conducted bilingually, if the Council is of the opinion that it can be properly conducted in that manner.

PART OF HEARING OR MEDIATION

(6) A directive under subsection (5) may apply to a part of the hearing or mediation, and in that case subsections (7) and (8) apply with necessary modifications.

Same

(7) In a bilingual hearing or mediation,

- (a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- (b) documents may be filed in either language;
- (c) in the case of a mediation, discussions may take place in either language;
- (d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

Same

(8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

SECTION 51.3

COMPLAINTS

51.3 (1) Any person may make a complaint to the Judicial Council alleging misconduct by a provincial judge.

Same

(2) If an allegation of misconduct against a provincial judge is made to a member of the Judicial Council, it shall be treated as a complaint made to the Judicial Council.

Same

(3) If an allegation of misconduct against a provincial judge is made to any other judge or to the Attorney General, the other judge, or the Attorney General, as the case may be, shall provide the person making the allegation

with information about the Judicial Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Judicial Council.

CARRIAGE OF MATTER

(4) Once a complaint has been made to the Judicial Council, the Council has carriage of the matter.

INFORMATION RE COMPLAINT

(5) At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it.

SECTION 51.4

REVIEW BY SUBCOMMITTEE

51.4 (1) A complaint received by the Judicial Council shall be reviewed by a subcommittee of the Council consisting of a provincial judge other than the Chief Justice and a person who is neither a judge nor a lawyer.

ROTATION OF MEMBERS

(2) The eligible members of the Judicial Council shall all serve on the subcommittee on a rotating basis.

DISMISSAL

(3) The subcommittee shall dismiss the complaint without further investigation if, in the subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process.

INVESTIGATION

(4) If the complaint is not dismissed under subsection (3), the subcommittee shall conduct such investigation as it considers appropriate.

EXPERT ASSISTANCE

(5) The subcommittee may engage persons, including counsel, to assist it in its investigation.

INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

NON-APPLICATION OF SPPA

(7) The *Statutory Powers Procedure Act* does not apply to the subcommittee's activities.

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INTERIM RECOMMENDATIONS

(8) The subcommittee may recommend to a regional senior judge the suspension, with pay, of the judge who is the subject of the complaint, or the judge's reassignment to a different location, until the complaint is finally disposed of.

Same

(9) The recommendation shall be made to the regional senior judge appointed for the region to which the judge is assigned, unless that regional senior judge is a member of the Judicial Council, in which case the recommendation shall be made to another regional senior judge.

POWER OF REGIONAL SENIOR JUDGE

(10) The regional senior judge may suspend or reassign the judge as the subcommittee recommends.

DISCRETION

(11) The regional senior judge's discretion to accept or reject the subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice.

EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

(12) If the complaint is against the Chief Justice of the Ontario Court of Justice, an associate chief justice of the Ontario Court of Justice or the regional senior judge who is a member of the Judicial Council, any recommendation under subsection (8) in connection with the complaint shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the subcommittee recommends.

SUBCOMMITTEE'S DECISION

(13) When its investigation is complete, the subcommittee shall,

- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Justice;
- (c) refer the complaint to a mediator in accordance with section 51.5; or
- (d) refer the complaint to the Judicial Council, with or without recommending that it hold a hearing under section 51.6.

Same

(14) The subcommittee may dismiss the complaint or refer it to the Chief Justice or to a mediator only if both members agree; otherwise, the complaint shall be referred to the Judicial Council.

CONDITIONS, REFERENCE TO CHIEF JUSTICE

(15) The subcommittee may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice.

REPORT

(16) The subcommittee shall report to the Judicial Council, without identifying the complainant or the judge who is the subject of the complaint, its disposition of any complaint that is dismissed or referred to the Chief Justice or to a mediator.

POWER OF JUDICIAL COUNCIL

(17) The Judicial Council shall consider the report, in private, and may approve the subcommittee's disposition or may require the subcommittee to refer the complaint to the Council.

Same

(18) The Judicial Council shall consider, in private, every complaint referred to it by the subcommittee, and may,

- (a) hold a hearing under section 51.6;
- (b) dismiss the complaint;
- (c) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection (15); or
- (d) refer the complaint to a mediator in accordance with section 51.5.

NON-APPLICATION OF SPPA

(19) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (17) and (18).

NOTICE TO JUDGE AND COMPLAINANT

(20) After making its decision under subsection (17) or (18), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

GUIDELINES AND RULES OF PROCEDURE

(21) In conducting investigations, in making recommendations under subsection (8) and in making decisions under subsections (13) and (15), the subcommittee shall follow the Judicial Council's guidelines and rules of procedure established under subsection 51.1 (1).

Same

(22) In considering reports and complaints and making decisions under subsections (17) and (18), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

SECTION 51.5

MEDIATION

51.5 (1) The Judicial Council may establish a mediation process for complainants and for judges who are the subject of complaints.

CRITERIA

(2) If the Judicial Council establishes a mediation process, it must also establish criteria to exclude from the process complaints that are inappropriate for mediation.

Same

(3) Without limiting the generality of subsection (2), the criteria must ensure that complaints are excluded from the mediation process in the following circumstances:

1. There is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable.
2. The complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*.
3. The public interest requires a hearing of the complaint.

LEGAL ADVICE

(4) A complaint may be referred to a mediator only if the complainant and the judge consent to the referral, are able to obtain independent legal advice and have had an opportunity to do so.

TRAINED MEDIATOR

(5) The mediator shall be a person who has been trained in mediation and who is not a judge, and if the mediation is conducted by two or more persons acting together, at least one of them must meet those requirements.

IMPARTIALITY

(6) The mediator shall be impartial.

EXCLUSION

(7) No member of the subcommittee that investigated the complaint and no member of the Judicial Council who dealt with the complaint under subsection 51.4 (17) or (18) shall participate in the mediation.

REVIEW BY COUNCIL

(8) The mediator shall report the results of the mediation, without identifying the complainant or the judge who is the subject of the complaint, to the Judicial Council, which shall review the report, in private, and may,

- (a) approve the disposition of the complaint; or
- (b) if the mediation does not result in a disposition or if the Council is of the opinion that the disposition is not in the public interest,
 - (i) dismiss the complaint,
 - (ii) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15), or
 - (iii) hold a hearing under section 51.6.

REPORT

(9) If the Judicial Council approves the disposition of the complaint, it may make the results of the mediation public, providing a summary of the complaint but not identifying the complainant or the judge.

REFERRAL TO COUNCIL

(10) At any time during or after the mediation, the complainant or the judge may refer the complaint to the Judicial Council, which shall consider the matter, in private, and may,

- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15); or
- (c) hold a hearing under section 51.6.

NON-APPLICATION OF SPPA

(11) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (8) and (10).

NOTICE TO JUDGE AND COMPLAINANT

(12) After making its decision under subsection (8) or (10), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

GUIDELINES AND RULES OF PROCEDURE

(13) In reviewing reports, considering matters and making decisions under subsections (8) and (10), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

SECTION 51.6

ADJUDICATION BY COUNCIL

51.6 (1) When the Judicial Council decides to hold a hearing, it shall do so in accordance with this section.

APPLICATION OF SPPA

(2) The *Statutory Powers Procedure Act*, except section 4 and subsection 9 (1), applies to the hearing.

RULES OF PROCEDURE

(3) The Judicial Council's rules of procedure established under subsection 51.1 (1) apply to the hearing.

COMMUNICATION RE SUBJECT-MATTER OF HEARING

(4) The members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate.

EXCEPTION

(5) Subsection (4) does not preclude the Judicial Council from engaging counsel to assist it in accordance with subsection 49 (21), and in that case the nature of the advice given by counsel shall be communicated to the parties so that they may make submissions as to the law.

PARTIES

(6) The Judicial Council shall determine who are the parties to the hearing.

EXCEPTION, CLOSED HEARING

(7) In exceptional circumstances, if the Judicial Council determines, in accordance with the criteria established under subsection 51.1 (1), that the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private.

DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

(8) If the hearing was held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1 (1) that there are exceptional circumstances, order that the judge's name not be disclosed or made public.

ORDERS PROHIBITING PUBLICATION

(9) If the complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of a complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or witness, as the case may be.

PUBLICATION BAN

(10) In exceptional circumstances and in accordance with the criteria established under subsection 51.1 (1), the Judicial Council may make an order prohibiting, pending the disposition of a complaint, the publication of information that might identify the judge who is the subject of the complaint.

DISPOSITIONS

(11) After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may,

- (a) warn the judge;
- (b) reprimand the judge;
- (c) order the judge to apologize to the complainant or to any other person;
- (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- (e) suspend the judge with pay, for any period;
- (f) suspend the judge without pay, but with benefits, for a period up to thirty days; or

COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

- (g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8.

Same

(12) The Judicial Council may adopt any combination of the dispositions set out in clauses (11) (a) to (f).

DISABILITY

(13) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

APPLICATION OF SUBS. (13)

(14) Subsection (13) applies if,

- (a) the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and
- (b) the Judicial Council dismisses the complaint or makes a disposition under clauses (11) (a) to (f).

UNDUE HARDSHIP

(15) Subsection (13) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

OPPORTUNITY TO PARTICIPATE

(16) The Judicial Council shall not make an order under subsection (13) against a person without ensuring that the person has had an opportunity to participate and make submissions.

CROWN BOUND

(17) An order made under subsection (13) binds the Crown.

REPORT TO ATTORNEY GENERAL

(18) The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition, subject to any order made under subsection 49 (24), and the Attorney General may make the report public if of the opinion that this would be in the public interest.

NON-IDENTIFICATION OF PERSONS

(19) The following persons shall not be identified in the report:

1. A complainant or witness at whose request an order was made under subsection (9).
2. The judge, if the hearing was conducted in private, unless the Judicial Council orders that the judge's name be disclosed.

CONTINUING PUBLICATION BAN

(20) If an order was made under subsection (10) and the Judicial Council dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent.

SECTION 51.7

COMPENSATION

51.7 (1) When the Judicial Council has dealt with a complaint against a provincial judge, it shall consider whether the judge should be compensated for his or her costs for legal services incurred in connection with all the steps taken under sections 51.4, 51.5 and 51.6 and this section in relation to the complaint.

CONSIDERATION OF QUESTION COMBINED WITH HEARING

(2) If the Judicial Council holds a hearing into the complaint, its consideration of the question of compensation shall be combined with the hearing.

PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

(3) The Judicial Council's consideration of the question of compensation shall take place in public if there was a public hearing into the complaint, and otherwise shall take place in private.

RECOMMENDATION

(4) If the Judicial Council is of the opinion that the judge should be compensated, it shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation.

Same

(5) If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount.

DISCLOSURE OF NAME

(6) The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the name unless there was a public hearing into the complaint or the Council has otherwise made the judge's name public.

AMOUNT OF COMPENSATION

(7) The amount of compensation recommended under subsection (4) or (5) may relate to all or part of the judge's costs for legal services, and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

PAYMENT

(8) The Attorney General shall pay compensation to the judge in accordance with the recommendation.

SECTION 51.8

REMOVAL FOR CAUSE

51.8 (1) A provincial judge may be removed from office only if,

- (a) a complaint about the judge has been made to the Judicial Council; and
- (b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),
 - (ii) conduct that is incompatible with the due execution of his or her office, or

- (iii) failure to perform the duties of his or her office.

TABLING OF RECOMMENDATION

(2) The Attorney General shall table the recommendation in the Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

ORDER FOR REMOVAL

(3) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Assembly.

APPLICATION

(4) This section applies to provincial judges who have not yet attained retirement age and to provincial judges whose continuation in office after attaining retirement age has been approved under subsection 47 (3), (4) or (5).

TRANSITION

(5) A complaint against a provincial judge that is made to the Judicial Council before the day section 16 of the *Courts of Justice Statute Law Amendment Act*, 1994 comes into force, and considered at a meeting of the Judicial Council before that day, shall be dealt with by the Judicial Council as it was constituted immediately before that day and in accordance with section 49 of this *Act* as it read immediately before that day.

SECTION 51.9

STANDARDS OF CONDUCT

51.9 (1) The Chief Justice of the Ontario Court of Justice may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall ensure that the standards of conduct are made available to the public, in English and French, when they have been approved by the Judicial Council.

GOALS

(3) The following are among the goals that the Chief Justice may seek to achieve by implementing standards of conduct for judges:

1. Recognizing the independence of the judiciary.
2. Maintaining the high quality of the justice system and ensuring the efficient administration of justice.
3. Enhancing equality and a sense of inclusiveness in the justice system.
4. Ensuring that judges' conduct is consistent with the respect accorded to them.
5. Emphasizing the need to ensure the professional and personal development of judges and the growth of their social awareness through continuing education.

SECTION 51.10

CONTINUING EDUCATION

51.10 (1) The Chief Justice of the Ontario Court of Justice shall establish a plan for the continuing education of provincial judges, and shall implement the plan when it has been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Judicial Council.

GOALS

- (3) Continuing education of judges has the following goals:
1. Maintaining and developing professional competence.
 2. Maintaining and developing social awareness.
 3. Encouraging personal growth.

SECTION 51.11

PERFORMANCE EVALUATION

51.11 (1) The Chief Justice of the Ontario Court of Justice may establish a program of performance evaluation for provincial judges, and may implement the program when it has been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall make the existence of the program of performance evaluation public when it has been approved by the Judicial Council.

GOALS

(3) The following are among the goals that the Chief Justice may seek to achieve by establishing a program of performance evaluation for judges:

1. Enhancing the performance of individual judges and of judges in general.
2. Identifying continuing education needs.
3. Assisting in the assignment of judges.
4. Identifying potential for professional development.

SCOPE OF EVALUATION

(4) In a judge's performance evaluation, a decision made in a particular case shall not be considered.

CONFIDENTIALITY

(5) A judge's performance evaluation is confidential and shall be disclosed only to the judge, his or her regional senior judge, and the person or persons conducting the evaluation.

INADMISSIBILITY, EXCEPTION

(6) A judge's performance evaluation shall not be admitted in evidence before the Judicial Council or any court or other tribunal unless the judge consents.

APPLICATION OF SUBSS. (5), (6)

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation.

SECTION 51.12

CONSULTATION

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Justice of the Ontario Court of Justice shall consult with judges of that court and with such other persons as he or she considers appropriate.

SECTION 87

MASTERS

87.—(1) Every person who was a master of the Supreme Court before the 1st day of September, 1990 is a master of the Superior Court of Justice.

JURISDICTION

(2) Every master has the jurisdiction conferred by the rules of court in proceedings in the Superior Court of Justice.

APPLICATION OF SS. 44 TO 51.12

(3) Sections 44 to 51.12 apply to masters, with necessary modifications, in the same manner as to provincial judges.

EXCEPTION

(4) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to masters.

Same

(5) The right of a master to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

Same

(6) When the Judicial Council deals with a complaint against a master, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of

Justice shall designate the master who is to replace the judge.

2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

Same

(7) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to masters only if the Chief Justice of the Superior Court of Justice consents.

COMPENSATION

(8) Masters shall receive the same salaries, pension benefits, other benefits and allowances as provincial judges receive under the framework agreement set out in the Schedule to this Act.

SECTION 87.1

SMALL CLAIMS COURT JUDGES

87.1 (1) This section applies to provincial judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990.

FULL AND PART-TIME SERVICE

(2) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to provincial judges to whom this section applies.

CONTINUATION IN OFFICE

(3) The right of a provincial judge to whom this section applies to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

COMPLAINTS

(4) When the Judicial Council deals with a complaint against a provincial judge to whom this section applies, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

APPLICATION OF SS. 51.9, 51.10, 51.11

(5) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to provincial judges to whom this section applies only if the Chief Justice of the Superior Court of Justice consents.

SECTION 45

APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

45. (1) A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order under subsection (2).

DUTY OF JUDICIAL COUNCIL

(2) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

UNDUE HARDSHIP

(3) Subsection (2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

GUIDELINES AND RULES OF PROCEDURE

(4) In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

OPPORTUNITY TO PARTICIPATE

(5) The Judicial Council shall not make an order under subsection (2) against a person without ensuring that the person has had an opportunity to participate and make submissions.

CROWN BOUND

(6) The order binds the Crown.

SECTION 47

RETIREMENT

(1) Every provincial judge shall retire upon attaining the age of sixty-five years.

Same

(2) Despite subsection (1), a judge appointed as a full-time magistrate, judge of a juvenile and family court or master before December 2, 1968 shall retire upon attaining the age of seventy years.

CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief Justice of the Ontario Court of Justice, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years.

SAME, REGIONAL SENIOR JUDGES

(4) A regional senior judge of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Justice, continue in that office until his or her term (including any renewal under subsection 42 (9)) expires, or until he or she attains the age of seventy-five years, whichever comes first.

**SAME, CHIEF JUSTICE AND ASSOCIATE
CHIEF JUSTICES**

(5) A Chief Justice or associate chief justice of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Judicial Council, continue in that office until his or her term expires, or until he or she attains the age of seventy-five years, whichever comes first.

Same

(6) If the Judicial Council does not approve a Chief Justice or associate chief justice continuation in that office under subsection (5), his or her continuation in the office of provincial judge is subject to the approval of the Judicial Council and not as set out in subsection (3).

CRITERIA

(7) Decisions under subsections (3), (4), (5) and (6) shall be made in accordance with criteria developed by the Chief Justice and approved by the Judicial Council.

TRANSITION

(8) If the date of retirement under subsections (1) to (5) falls earlier in the calendar year than the day section 16 of the *Courts of Justice Statute Law Amendment Act, 1994* comes into force and the annual approval is outstanding on that day, the judge's continuation in office shall be dealt with in accordance with section 44 of this Act as it read immediately before that day.



APPENDIX-E

CANADIAN JUDICIAL COUNCIL – ETHICAL PRICIPLES FOR JUDGES

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APPENDIX – E

CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES



ETHICAL PRINCIPLES FOR JUDGES

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FOREWORD

The ability of Canada's legal system to function effectively and to deliver the kind of justice that Canadians need and deserve depends in large part on the ethical standards of our judges.

The Canadian Judicial Council has a central concern in this matter. The adoption of a widely accepted ethical frame of reference helps the Council fulfill its responsibilities and ensures that judges and the public alike are aware of the principles by which judges should be guided in their personal and professional lives.

Since its creation in 1971, the Council has supported the judiciary in a positive way with tools that will help to improve the delivery of justice in this country. The publication in 1998 of Ethical Principles for Judges constitutes a valuable achievement in this regard.

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We owe a continuing debt of gratitude to the working committee that the Council established in 1994 and to the many experts who collaborated to give Canadian judges an essential tool for the delivery of justice in this country. The Canadian Judicial Council is pleased to renew its endorsement of the high standards of conduct that are expressed in these principles.

The Right Honourable Beverley McLachlin
Chief Justice of Canada

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1. PURPOSE

Statement | *The purpose of this document is to provide ethical guidance for federally appointed judges.*

Principles:

1. The Statements, Principles and Commentaries describe the very high standards toward which all judges strive. They are principles of reason to be applied in light of all of the relevant circumstances and consistently with the requirements of judicial independence and the law. Setting out the very best in these Statements, Principles and Commentaries does not preclude reasonable disagreements about their application or imply that departures from them warrant disapproval.

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2. The Statements, Principles and Commentaries are advisory in nature. Their goals are to assist judges with the difficult ethical and professional issues which confront them and to assist members of the public to better understand the judicial role. They are not and shall not be used as a code or a list of prohibited behaviours. They do not set out standards defining judicial misconduct.

3. An independent judiciary is the right of every Canadian. A judge must be and be seen to be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone. Nothing in these Statements, Principles and Commentaries can, or is intended to limit or restrict judicial independence in any manner. To do so would be to deny the very thing this document seeks to further: the rights of everyone to equal and impartial justice administered by fair and independent judges. As indicated in the chapter on Judicial Independence, judges have the duty to uphold and defend judicial independence, not as a privilege of judicial office but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial judges.

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Commentary:

1. These Statements, Principles and Commentaries are the latest in a series of Canadian efforts to provide guidance to judges on ethical and professional questions and to better inform the public about the high ideals which judges embrace and toward which they strive. They build upon the earlier work of the Hon. J.O. Wilson in *A Book for Judges* published in 1980, the Rt. Hon. Gerald Fauteux in *Le livre du magistrat* also published in 1980, the Canadian Judicial Council's *Commentaries on Judicial Conduct* published in 1991 and Professor Beverley Smith's text, *Professional Conduct for Lawyers and Judges* (1998). While drawing heavily on these invaluable resources, the present publication is by far the most comprehensive treatment of the subject to date in Canada. But it cannot provide exhaustive coverage of the myriad issues that arise in practice. The sources just mentioned, as well as those referred to in the next Commentary, will continue to be of assistance to Canadian judges.

2. As the references throughout the text indicate, a wide variety of sources have been consulted in the process of preparing this document. These include not only Canadian sources but also the Code of Judicial Conduct applying to the United States Federal judiciary, the American Bar Association's *Model Code of Judicial Conduct* (1990) as well as scholarly writing and rulings concerning judicial conduct in Canada, the United Kingdom, Australia and the United States. Of particular note are J.B. Thomas, *Judicial Ethics in Australia* (2d, 1997), J. Shaman et al, *Judicial Conduct and Ethics* (2d, 1995) and S. Shetreet, *Judges on Trial* (1976). While all of these sources are helpful, this document is uniquely the work of Canadian judges. The process which resulted in these Statements, Principles and Commentaries was carried forward by a Working Committee representative of both the Canadian Judicial Council and the Canadian Judges Conference. An extensive process of consultation within the judiciary and beyond ensured that these Statements, Principles and Commentaries have been the subject of painstaking examination and vigorous debate. The intention is that Canadian judges will accept these Statements, Principles and Commentaries as reflective of their high ethical aspirations and that they will find them worthy of respect and deserving of careful consideration when facing any of the issues addressed in them.

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3. A document of this nature can never be viewed as the "final word" on such an important and complex subject. Publication of these Statements, Principles and Commentaries coincides with the establishment of an Advisory Committee of Judges to which specific questions may be submitted by judges and which will respond with advisory opinions. This process will contribute to ongoing review and elaboration of the subjects dealt with in the Principles as well as introduce new issues that they do not address. More importantly, the Advisory Committee will ensure that help is readily available to judges looking for guidance.

2. JUDICIAL INDEPENDENCE

Statement: *An independent judiciary is indispensable to impartial justice under law. Judges should, therefore, uphold and exemplify judicial independence in both its individual and institutional aspects.*

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Principles:

1. Judges must exercise their judicial functions independently and free of extraneous influence.
2. Judges must firmly reject any attempt to influence their decisions in any matter before the Court outside the proper process of the Court.
3. Judges should encourage and uphold arrangements and safeguards to maintain and enhance the institutional and operational independence of the judiciary.
4. Judges should exhibit and promote high standards of judicial conduct so as to reinforce public confidence which is the cornerstone of judicial independence.

Commentary:

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1. Judicial independence is not the private right of judges but the foundation of judicial impartiality and a constitutional right of all Canadians. Independence of the judiciary refers to the necessary individual and collective or institutional independence required for impartial decisions and decision making.¹ Judicial independence thus characterizes both a state of mind and a set of institutional and operational arrangements. The former is concerned with the judge's impartiality in fact; the latter with defining the relationships between the judiciary and others, particularly the other branches of government, so as to assure both the reality and the appearance of independence and impartiality. The Statement and Principles deal with judges' ethical obligations as regards their individual and collective independence. They do not deal with the many legal issues relating to judicial independence.

2. In *Valente v. The Queen*, LeDain, J. noted that "...judicial independence involves both individual and institutional relationships: the individual independence of a judge, as reflected in such matters as security of tenure and the institutional independence of the court or tribunal over which he or she presides, as reflected in its institutional or administrative relationships to the executive and legislative branches of government."² He concluded that "...judicial independence is a status or relationship resting on objective conditions or guarantees as well as a state of mind or attitude in the actual exercise of judicial functions..."³ The objective conditions and guarantees include, for example, security of tenure, security of remuneration and immunity from civil liability for judicial acts.

¹ S. Shetreet, *Judges on Trial*, (1976) (hereafter "*Shetreet*") at 17.

² [1985] 2 S.C.R. 673 at 687.

³ *Ibid.* at 689.

3. The first qualification of a judge is the ability to make independent and impartial decisions. The subject of judicial impartiality is treated in detail in chapter 6. However, judicial independence is not only a matter of appropriate external and operational arrangements. It is also a matter of independent and impartial decision making by each and every judge. The judge's duty is to apply the law as he or she understands it without fear or favour and without regard to whether the decision is popular or not. This is a cornerstone of the rule of law. Judges individually and collectively should protect, encourage and defend judicial independence.

4. Judges must, of course, reject improper attempts by litigants, politicians, officials or others to influence their decisions. They must also take care that communications with such persons that judges may initiate could not raise reasonable concerns about their independence. As the Honourable J.O. Wilson put it in *A Book for Judges*:

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It may be safely assumed that every judge will know that [attempts to influence a court] must only be made publicly in a court room by advocates or litigants. But experience has shown that other persons are unaware of or deliberately disregard this elementary rule, and it is likely that any judge will, in the course of time, be subjected to ex parte efforts by litigants or others to influence his decisions in matters under litigation before him.

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Regardless of the source, ministerial, journalistic or other, all such efforts must, of course, be firmly rejected. This rule is so elementary that it requires no further exposition.⁴

⁴ J.O. Wilson, *A Book for Judges* (1980) (hereafter "*Wilson*") at 54-55.

5. Given the independence accorded judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily upon public confidence. Lapses and questionable conduct by judges tend to erode that confidence. As Professor Nolan points out, judicial independence and judicial ethics have a symbiotic relationship.⁵ Public acceptance of and support for court decisions depends upon public confidence in the integrity and independence of the bench. This, in turn, depends upon the judiciary upholding high standards of conduct.

[O]nly by maintaining high standards of conduct will the judiciary (1) continue to warrant the public confidence on which deference to judicial rulings depends, and (2) be able to exercise its own independence in its judgements and rulings.⁶

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In short, judges should demonstrate and promote high standards of judicial conduct as one element of assuring the independence of the judiciary.

6. Judges should be vigilant with respect to any attempts to undermine their institutional or operational independence. While care must be taken not to risk trivializing judicial independence by invoking it indiscriminately in opposition to every proposed change in the institutional arrangements affecting the judiciary, judges should be staunch defenders of their own independence. Although the form and nature of the defence must be carefully considered, the propriety in principle of such defence cannot be questioned.⁷

⁵ B. Nolan, "The Role of Judicial Ethics in the Discipline and Removal of Federal Judges," in *Research Papers of the National Commission on Judicial Discipline & Removal Volume I* (1993), pp. 867-912, at 874.

⁶ *Ibid.* at 875.

⁷ These issues are addressed further in chapter 6, *infra*.

7. Judges should also recognize that not everyone is familiar with these concepts and their impact on judicial responsibilities. Public education with respect to the judiciary and judicial independence thus becomes an important function, for misunderstanding can undermine public confidence in the judiciary. There is, for example, a danger of misperception about the nature of the relationship between the judiciary and the executive, particularly given the Attorney General's dual roles as the cabinet minister responsible for the administration of justice and as the government's lawyer. The public may not get a completely balanced view of the principle of judicial independence from the media which may portray it incorrectly as protecting judges from review of and public debate concerning their actions. Judges, therefore, should take advantage of appropriate opportunities to help the public understand the fundamental importance of judicial independence, in view of the public's own interest.⁸

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⁸ The phrase "appropriate opportunities" should remind judges that the circumstances of such public interventions must be considered carefully given the constraints of the judicial role. Some of the relevant considerations are discussed more fully in chapter 6, "Impartiality"; see also, for example, J.B. Thomas, *Judicial Ethics in Australia* (2d, 1997) (hereafter "Thomas") at 106-111.

8. Judges are asked frequently to serve as inquiry commissioners. In considering such a request, a judge should think carefully about the implications for judicial independence of accepting the appointment. There are examples of Judicial Commissioners becoming embroiled in public controversy and being criticized and embarrassed by the very governments which appointed them. The terms of reference and other conditions such as time and resources should be examined carefully so as to assess their compatibility with the judicial function.⁹ The Position of the Canadian Judicial Council on the Appointment of Federally Appointed Judges to Commissions of Inquiry, approved in March 1998, provides useful guidance in this area.

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⁹ It is interesting to note that the Australian High Court has ruled that, on separation of powers grounds, there are strict limits in law on the nature of commissions to which judges may be appointed: *Wilson v. Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 70 A.L.J.R. 743; *Kable v. D.P.P.* (1996) 70 A.L.J.R. 814; see also R. MacGregor Dawson, *The Government of Canada* (3d) at 482: "There would seem to be little purpose in taking elaborate care to separate the judge from politics and to render him quite independent of the executive, and then placing him in a position as a Royal Commissioner where his impartiality may be attacked and his findings — no matter how correct and judicial they may be — are liable to be interpreted as favouring one political party at the expense of the other. For many of the inquiries or boards place the judge in a position where he cannot escape controversy: ...It has been proved time and again that in many of these cases the judge loses in dignity and reputation, and his future is appreciably lessened thereby. Moreover, if the judge remains away from his regular duties for very long periods, he is apt to lose his sense of balance and detachment; and he finds that the task of getting back to normal and of adjusting his outlook and habits of mind to purely judicial work is by no means easy."

3. INTEGRITY

Statement: *Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary.*

Principles:

1. Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons.
2. Judges, in addition to observing this high standard personally, should encourage and support its observance by their judicial colleagues.

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Commentary:

1. Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment. The Canadian judiciary has a strong and honourable tradition in this area which serves as a sound foundation for appropriate judicial conduct.

2. While the ideal of integrity is easy to state in general terms, it is much more difficult and perhaps even unwise to be more specific. There can be few absolutes since the effect of conduct on the perception of the community depends on community standards that may vary according to place and time.

3. As one commentator put it, the key issue about a judge's conduct must be how it "...reflects upon the central components of the judge's ability to do the job."¹⁰ This requires consideration of first, how particular conduct would be perceived by reasonable, fair minded and informed members of the community and second, whether that perception is likely to lessen respect for the judge or the judiciary as a whole. If conduct is likely to diminish respect in the minds of such persons, the conduct should be avoided. As Shaman put it, "...the ultimate standard for judicial

¹⁰ J. Shaman et al., *Judicial Conduct and Ethics* (2d, 1995) (hereafter "Shaman") at 335.

conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office.”¹¹ The judge should exhibit respect for the law, integrity in his or her private dealings and generally avoid the appearance of impropriety.

4. Judges, of course, have private lives and should enjoy, as much as possible, the rights and freedoms of citizens generally. Moreover, an out of touch judge is less likely to be effective. Neither the judge’s personal development nor the public interest is well served if judges are unduly isolated from the communities they serve. Legal standards frequently call for the application of the reasonable person test. Judicial fact-finding, an important part of a judge’s work, calls for the evaluation of evidence in light of common sense and experience. Therefore, judges should, to the extent consistent with their special role, remain closely in touch with the public. These issues are discussed more fully in the “Impartiality” chapter, particularly section C thereof.

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5. A judge’s conduct, both in and out of court, is bound to be the subject of public scrutiny and comment. Judges must therefore accept some restrictions on their activities — even activities that would not elicit adverse notice if carried out by other members of the community. Judges need to strike a delicate balance between the requirements of judicial office and the legitimate demands of the judge’s personal life, development and family.

6. In addition to judges’ observing high standards of conduct personally they should also encourage and support their judicial colleagues to do the same as questionable conduct by one judge reflects on the judiciary as a whole.

¹¹ *Ibid.*, at 312.

APPENDIX – E

CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

7. Judges also have opportunities to be aware of the conduct of their judicial colleagues. If a judge is aware of evidence which, in the judge's view, is reliable and indicates a strong likelihood of unprofessional conduct by another judge, serious consideration should be given as to how best to ensure that appropriate action is taken having regard to the public interest in the due administration of justice. This may involve counselling, making inquiries of colleagues, or informing the chief justice or associate chief justice of the court.

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4. DILIGENCE

Statement: *Judges should be diligent in the performance of their judicial duties.*

Principles:

1. Judges should devote their professional activity to judicial duties broadly defined, which include not only presiding in court and making decisions, but other judicial tasks essential to the court's operation.
2. Judges should take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office.
3. Judges should endeavour to perform all judicial duties, including the delivery of reserved judgments, with reasonable promptness.
4. Judges should not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues.

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Commentary:

1. Socrates counselled judges to hear courteously, answer wisely, consider soberly and to decide impartially. These judicial virtues are all aspects of judicial diligence. It is appropriate to add to Socrates' list the virtue of acting expeditiously, but diligence is not primarily concerned with expedition. Diligence, in the broad sense, is concerned with carrying out judicial duties with skill, care and attention, as well as with reasonable promptness.

2. Section 55 of the *Judges Act* (which applies to federally appointed judges) provides that judges must devote themselves to judicial duties.¹² Subject to the limitations imposed by the *Judges Act* and the judicial role, judges are free to participate in other activities that do not detract from the performance of judicial duties. In short, the work of the judge's court comes first.

3. While judges should exhibit diligence in the performance of their judicial duties, their ability to do so will depend on the burden of work, the adequacy of resources including staff, technical assistance and time for research, deliberation, writing and other judicial duties apart from sitting in court. The importance of the judge's responsibility to his or her family is also recognized. Judges should have sufficient vacation and leisure time to permit the maintenance of physical and mental wellness and reasonable opportunities to enhance the skill and knowledge necessary for effective judging.

¹² *Judges Act*, R.S.C. 1985, c.J-1, s.55. The text of the section is as follows:

55. No judge shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to those judicial duties.

4. As mentioned in Commentary 8 of the “Judicial Independence” chapter, judges are sometimes called upon by governments to undertake tasks which take them away from the regular work of their courts. Service on royal commissions of inquiry is one example. A judge should not accept such an appointment without consulting with his or her chief justice to ensure that acceptance of the appointment will not unduly interfere with the effective functioning of the court or unduly burden its other members. The position of the Canadian Judicial Council, approved at its March 1998 mid-year meeting, provides useful guidance in this area.

5. As long ago as *Magna Carta*, it was recognized that judges should have a good knowledge of the law.¹³ This knowledge extends not only to substantive and procedural law, but to the real life impact of law. As one scholar put it, law is not just what it says; law is what it does.¹⁴ Sustained efforts to maintain and enhance the knowledge, skills and attitudes necessary for effective judging are important elements of judicial diligence. This involves participation in continuing education programs as well as private study.¹⁵

6. It is useful to consider the subject of judicial diligence under three headings: Adjudicative Duties, Administrative and Other Out of Court Duties, and Contributions to the Administration of Justice Generally.

¹³ The reference is to Article 45 of *Magna Carta*: “We will not make any justices, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it” as quoted in D.K. Carrol, *Handbook for Judges* (1961) at 29.

¹⁴ R.A. Samek, “A Case for Social Law Reform” (1977), 55 Can. Bar Rev. 409 at 411.

¹⁵ See for example, Canadian Bar Foundation, *Report of the Canadian Bar Association Committee on the Independence of the Judiciary in Canada* (1985) at 36: “Competence in the discharge of judicial duties is an important factor in the public’s support of an independent judiciary.”; see generally, M.L. Friedland, *A Place Apart: Judicial Independence and Accountability in Canada* (1995) at 167 ff.; see also chapter 5, “Equality”; the current goal recommended by the National Judicial Institute is a minimum of 10 days of continuing education per year for each judge although workload does not always allow this goal to be achieved.

Adjudicative Duties

7. Diligence in the performance of adjudicative duties includes striving for impartial and even-handed application of the law, thoroughness, decisiveness, promptness and the prevention of abuse of the process and improper treatment of witnesses. While these are all qualities and skills a judge needs, the variety of cases and the particular conduct of counsel and parties require a judge conducting a hearing to emphasize one or more, sometimes at the expense of some of the others, in order to achieve the proper balance. Striking this balance may be particularly challenging when one party is represented by a lawyer and another is not. While doing whatever is possible to prevent unfair disadvantage to the unrepresented party, the judge must be careful to preserve his or her impartiality.

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8. The obligation to be patient and treat all before the court with courtesy does not relieve the judge of the equally important duty to be decisive and prompt in the disposition of judicial business. The ultimate test of whether the judge has successfully combined these ingredients into the conduct of the matters before the court is whether the matter has not only been dealt with fairly but in a fashion that is seen to be fair.¹⁶ These issues are addressed in the “Impartiality” chapter, section B.

9. Generally speaking, a judge should perform all properly assigned judicial duties, be punctual unless other judicial duties prevent it and be reasonably available to perform all assigned duties.

¹⁶ See *Brouillard v. The Queen*, [1985] 1 S.C.R. 39 per Lamer, J. (as he then was) for the court at 48: “...although the judge may and must intervene for justice to be done, he must none the less do so in such a way that justice is seen to be done.” (emphasis in original). The court also cited with approval the discussion of this subject in G. Fauteux, *Le livre du magistrat* (1980) (hereafter “*Livre*”).

10. The proper preparation of judgments is frequently difficult and time consuming. However, the decision and reasons should be produced by the judge as soon as reasonably possible, having due regard to the urgency of the matter and other special circumstances. Special circumstances may include illness, the length or complexity of the case, an unusually heavy workload or other factors making it impossible to give judgment sooner. In 1985, the Canadian Judicial Council resolved that, in its view, reserved judgments should be delivered within six months after hearings, except in special circumstances.¹⁷

11. It is, of course, often necessary for judges to make findings of credibility and to rule on the propriety of others' conduct. However, judges should avoid making comments about persons who are not before the court unless it is necessary for the proper disposition of the case. For example, irrelevant or otherwise unnecessary comments in judgments about a person's conduct or motives ought to be avoided.¹⁸

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Administrative and Other Out of Court Duties

12. Today, judicial duties include administrative and other out of court activities. Judges have important responsibilities, for example, in case management and pre-trial conferences as well as on committees of the court. These are all judicial duties and should be undertaken with diligence.

¹⁷ Canadian Judicial Council Resolution September 1985; Legislation and Rules of Court may establish times within which judgment is to be given: see for example *Code of Civil Procedure* (Qc), article 465; repeated inability to give timely judgment has been the basis of a number of complaints to the Canadian Judicial Council: see Canadian Judicial Council, *Annual Report 1992-93* at 14.

¹⁸ See *Commentaries on Judicial Conduct* (1991) (hereafter "Commentaries") at 82-83; Shetreet at 294-5.

Contributions to the Administration of Justice Generally

13. Judges are uniquely placed to make a variety of contributions to the administration of justice. Judges, to the extent that time permits and subject to the limitations imposed by judicial office, may contribute to the administration of justice by, for example, taking part in continuing legal education programs for lawyers and judges and in activities to make the law and the legal process more understandable and accessible to the public. These activities are discussed in the “Impartiality” chapter, particularly sections B and C.

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14. It is a delicate question whether and in what circumstances a judge should report, or cause to be reported, a lawyer to the lawyer’s professional governing body. Taking such action may affect the ability of the judge to continue in the proceeding in which that lawyer is appearing, given that the judge’s view of the lawyer’s conduct may give rise to a reasonable apprehension of bias against the lawyer or the lawyer’s client. On the other hand, a judge is in a special position to observe lawyers’ conduct before the court. Putting aside any issue of contempt, generally a judge should take, or cause to be taken, appropriate action where the judge has clear and reliable evidence of serious misconduct or gross incompetence by a lawyer. The judge will have to weigh carefully whether the interests of justice require that he or she wait until the end of the proceeding or whether there are circumstances which require earlier action even though the judge, nonetheless, continues to preside.

5. EQUALITY

Statement: *Judges should conduct themselves and proceedings before them so as to assure equality according to law.*

Principles:

1. Judges should carry out their duties with appropriate consideration for all persons (for example, parties, witnesses, court personnel and judicial colleagues) without discrimination. 2
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2. Judges should strive to be aware of and understand differences arising from, for example, gender, race, religious conviction, culture, ethnic background, sexual orientation or disability.
3. Judges should avoid membership in any organization that they know currently practices any form of discrimination that contravenes the law.
4. Judges, in the course of proceedings before them, should disassociate themselves from and disapprove of clearly irrelevant comments or conduct by court staff, counsel or any other person subject to the judge's direction which are sexist, racist or otherwise demonstrate discrimination on grounds prohibited by law.

Commentary:

1. The Constitution and a variety of statutes enshrine a strong commitment to equality before and under the law and equal protection and benefit of the law without discrimination. This is not a commitment to identical treatment but rather “...to the equal worth and human dignity of all persons” and “...a desire to rectify and prevent discrimination against particular groups suffering social, political and legal disadvantage in our society.”¹⁹ Moreover, Canadian law recognizes that discrimination is concerned not only with intent, but with effects.²⁰ Quite apart from explicit constitutional and statutory guarantees, fair and equal treatment has long been regarded as an essential attribute of justice. While its demands in particular situations are sometimes far from self evident, the law’s strong societal commitment places concern for equality at the core of justice according to law.

2. Equality according to law is not only fundamental to justice, but is strongly linked to judicial impartiality. A judge who, for example, reaches a correct result but engages in stereotyping does so at the expense of the judge’s impartiality, actual or perceived.

3. Judges should not be influenced by attitudes based on stereotype, myth or prejudice. They should, therefore, make every effort to recognize, demonstrate sensitivity to and correct such attitudes.

¹⁹ *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 per LaForest, J. for the court at 667.

²⁰ *Ibid.* at 670–671.

4. As is discussed in more detail in the “Impartiality” chapter, judges should strive to ensure that their conduct is such that any reasonable, fair minded and informed member of the public would justifiably have confidence in the impartiality of the judge. Judges should avoid comments, expressions, gestures or behaviour which reasonably may be interpreted as showing insensitivity to or disrespect for anyone. Examples include irrelevant comments based on racial, cultural, sexual or other stereotypes and other conduct implying that persons before the court will not be afforded equal consideration and respect.

Inappropriate conduct may arise from a judge being unfamiliar with cultural, racial or other traditions or failing to realize that certain conduct is hurtful to others. Judges therefore should attempt by appropriate means to remain informed about changing attitudes and values and to take advantage of suitable educational opportunities (which ought to be made reasonably available) that will assist them to be and appear to be impartial. In doing this, however, it is also necessary to take care that these efforts enhance and do not detract from judges’ perceived impartiality. All forms or vehicles of education are not necessarily appropriate for judges given the demands of independence and impartiality. Care must be taken that exaggerated or unfounded concern in this regard does not undermine efforts to enhance good judging.

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Principle 4 deals with the role of the presiding judge in addressing clearly irrelevant comments which are sexist or racist or other such inappropriate conduct in proceedings before them. This does not require that proper advocacy or admissible testimony be curtailed where, for example, matters of gender, race or other similar factors are properly before the court. This advice is consistent with the judge's general duty to listen fairly but, when necessary, to assert firm control over the proceeding and to act with appropriate firmness to maintain an atmosphere of dignity, equality and order in the courtroom. Principle 4 certainly does not counsel perfection. Further, applying it may sometimes be a formidable challenge for the judge. The adversarial system gives the parties and their counsel considerable leeway and the relevance and importance of evidence may be difficult to assess accurately as it is being presented. The judge should always do her or his best to strike the right balance. The fact that, when reconsidered later with the benefit of hindsight and the opportunity for further reflection, the situation might have been handled differently is not, of itself, any indication that the judge failed to deal with inappropriate conduct during the proceeding.

6. IMPARTIALITY

Statement: *Judges must be and should appear to be impartial with respect to their decisions and decision making.*

Principles:

A. General

1. Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances confidence in their impartiality and that of the judiciary.
2. Judges should as much as reasonably possible conduct their personal and business affairs so as to minimize the occasions on which it will be necessary to be disqualified from hearing cases.
3. The appearance of impartiality is to be assessed from the perspective of a reasonable, fair minded and informed person.

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B. Judicial Demeanour

1. While acting decisively, maintaining firm control of the process and ensuring expedition, judges should treat everyone before the court with appropriate courtesy.

C. Civic and Charitable Activity

1. Judges are free to participate in civic, charitable and religious activities subject to the following considerations:

(a) Judges should avoid any activity or association that could reflect adversely on their impartiality or interfere with the performance of judicial duties.

(b) Judges should not solicit funds (except from judicial colleagues or for appropriate judicial purposes) or lend the prestige of judicial office to such solicitations.

(c) Judges should avoid involvement in causes or organizations that are likely to be engaged in litigation.

(d) Judges should not give legal or investment advice.

D. Political Activity

1. Judges should refrain from conduct such as membership in groups or organizations or participation in public discussion which, in the mind of a reasonable, fair minded and informed person, would undermine confidence in a judge's impartiality with respect to issues that could come before the courts.

2. All partisan political activity must cease upon appointment. Judges should refrain from conduct that, in the mind of a reasonable, fair minded and informed person, could give rise to the appearance that the judge is engaged in political activity.

3. Judges should refrain from:

(a) membership in political parties and political fund raising;

(b) attendance at political gatherings and political fund raising events;

(c) contributing to political parties or campaigns;

(d) taking part publicly in controversial political discussions except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice;

(e) signing petitions to influence a political decision.

4. Although members of a judge's family have every right to be politically active, judges should recognize that such activities of close family members may, even if erroneously, adversely affect the public perception of a judge's impartiality. In any case before the court in which there could reasonably be such a perception, the judge should not sit.

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E. Conflicts of Interest

1. Judges should disqualify themselves in any case in which they believe they will be unable to judge impartially.

2. Judges should disqualify themselves in any case in which they believe that a reasonable, fair minded and informed person would have a reasoned suspicion of conflict between a judge's personal interest (or that of a judge's immediate family or close friends or associates) and a judge's duty.

3. Disqualification is not appropriate if: (a) the matter giving rise to the perception of a possibility of conflict is trifling or would not support a plausible argument in favour of disqualification, or (b) no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a miscarriage of justice.

Commentary:**A. General**

A.1 From at least the time of John Locke in the late seventeenth century, adjudication by impartial and independent judges has been recognized as an essential component of our society.²¹ Impartiality is the fundamental qualification of a judge and the core attribute of the judiciary. The Statement and Principles do not and are not intended to deal with the law relating to judicial disqualification or recusation.

A.2 While judicial impartiality and independence are distinct concepts, they are closely related. This relationship was explored recently by Gonthier, J. on behalf of the majority of the Supreme Court of Canada in *Ruffo v. Conseil de la Magistrature*.²² The court noted that the right to be tried by an independent and impartial tribunal is an integral part of the principles of fundamental justice protected by s.7 of the Canadian Charter²³ and reaffirmed the following statement by Le Dain, J. in *R. v. Valente*:

Although there is obviously a close relationship between independence and impartiality, they are never the less separate and distinct values and requirements. Impartiality refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case. The word “impartial”...connotes absence of bias, actual or perceived

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²¹ Peter H. Russell, *The Judiciary in Canada: The Third Branch of Government* (1987) (hereafter “Russell”).

²² [1995] 4 S.C.R. 267 at 296-299.

²³ *Ibid.*

Both independence and impartiality are fundamental, not only to the capacity to do justice in a particular case but also to individual and public confidence in the administration of justice. Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation. It is, therefore, important that a tribunal should be perceived as independent, as well as impartial...²⁴

Lamer C.J.C. put it this way in *R. v. Lippé*:

The overall objective of guaranteeing judicial independence is to ensure a reasonable perception of impartiality; judicial independence is but a “means” to this “end.” If judges could be perceived as “impartial” without judicial “independence” the requirement of “independence” would be unnecessary. However, judicial independence is critical to the public’s perception of impartiality. Independence is the cornerstone, a necessary prerequisite for judicial impartiality.²⁵

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A.3 Impartiality is not only concerned with perception, but more fundamentally with the actual absence of bias and prejudgment. This dual aspect of impartiality is captured in the often repeated words that justice must not only be done, but manifestly be seen to have been done. As de Grandpre, J. put it in *Committee for Justice and Liberty v. National Energy Board*,²⁶ the test is whether “an informed person, viewing the matter realistically and practically — and having thought the matter through —” would apprehend a lack of impartiality in the decision maker. Whether there is a reasonable apprehension of bias is to be assessed from the point of view of a reasonable, fair minded and informed person.

²⁴ [1985] 2 S.C.R. 673 at 685 and 689.

²⁵ [1991] 2 S.C.R. 114 at 139.

²⁶ [1978] 1 S.C.R. 369, most recently endorsed in *R.D.S. v. The Queen*, [1997] 3 S.C.R. 484 *per* Cory, J. at 530 and *per* L’Heureux-Dubé and McLachlin, JJ. at 502.

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A.4 “True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind.”²⁷ The judge’s fundamental obligation is to strive to be and to appear to be as impartial as is possible. This is not a counsel of perfection. Rather it underlines the fundamental nature of the obligation of impartiality which also extends to minimizing any reasonable apprehension of bias.

A.5 A reasonable perception that a judge lacks impartiality is damaging to the judge, the judiciary as a whole and the good administration of justice. Judges should, therefore, avoid deliberate use of words or conduct, in and out of court, that could reasonably give rise to a perception of an absence of impartiality.²⁸ Everything from his or her associations or business interests to remarks which the judge may consider to be “harmless banter,” may diminish the judge’s perceived impartiality.²⁹

A.6 The expectations of litigants may be very high. Some will be quick to perceive bias quite unjustifiably when a decision is not in their favour. Therefore every effort should be made to ensure that reasonable grounds for such a perception are avoided or minimized. On the other hand, judges have an obligation to treat all parties fairly and evenhandedly; those litigants who perceive bias where no reasonable, fair minded and informed person would find it are not entitled to different or special treatment for that reason. Moreover, as discussed below, the judge also has the obligation to ensure that proceedings are conducted in an orderly and efficient manner. This may well require an appropriate degree of firmness.

²⁷ In *R.D.S. v. The Queen*, *supra*, note 26, at 504, L’Heureux-Dubé and McLachlin, JJ. (Gonthier and LaForest, JJ., concurring) cited this passage from page 12 of *Commentaries* with approval.

²⁸ American Bar Association, *Model Code of Judicial Conduct* (1990) (hereafter “*ABA Model Code* (1990)”), Commentary to Canon 3B.

²⁹ *Canadian Judicial Council Annual Report 1992-93* at 16.

It is helpful to address the question of impartiality under more specific headings.

B. Judicial Demeanour

B.1 Litigants and others scrutinize judges very closely for any indication of unfairness. Unjustified reprimands of counsel, insulting and improper remarks about litigants and witnesses, statements evidencing prejudgment and intemperate and impatient behaviour may destroy the appearance of impartiality. On the other hand, judges are obliged to ensure that proceedings are conducted in an orderly and efficient manner and that the court's process is not abused. An appropriate measure of firmness is necessary to achieve this end. A fine balance is to be drawn by judges who are expected both to conduct the process effectively and avoid creating in the mind of a reasonable, fair minded and informed person any impression of a lack of impartiality. These issues are more fully discussed in chapters 4 and 5, "Diligence" and "Equality." It bears repeating, however, that any action which, in the mind of a reasonable, fair minded and informed person who has considered the matter, would give rise to reasoned suspicion of a lack of impartiality must be avoided. When such impressions are created, they affect not only the litigants before the court but public confidence in the judiciary generally.³⁰

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C. Civic and Charitable Activity

C.1 A judge is appointed to serve the public. Many persons appointed to the bench have been and wish to continue to be active in other forms of public service. This is good for the community and for the judge, but carries certain risks. For that reason, it is important to address the question of the limits that judicial appointment places upon the judge's community activities.

³⁰ See chapter 4, "Diligence" and chapter 5, "Equality."

C.2 The judge administers the law on behalf of the community and therefore unnecessary isolation from the community does not promote wise or just judgments. The Right Honourable Gerald Fauteux put the matter succinctly and eloquently in *Le livre du magistrat*³¹ (translation):

[there is no intention] to place the judiciary in an ivory tower and to require it to cut off all relationship with organizations which serve society. Judges are not expected to live on the fringe of society of which they are an important part. To do so would be contrary to the effective exercise of judicial power which requires exactly the opposite approach.

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C.3 The precise constraints under which judges should conduct themselves as regards civic and charitable activity are controversial inside and outside the judiciary. This is not surprising given that the question involves balancing competing considerations. On one hand, there are the beneficial aspects, both for the community and the judiciary, of the judge being active in other forms of public service. This needs to be assessed in light of the expectations and circumstances of the particular community. On the other hand, the judge's involvement may, in some cases, jeopardize the perception of impartiality or lead to an undue number of recusals. If this is the case, the judge should (unless the principle of necessity, discussed in section E.17, is implicated) avoid the activity.

C.4 *The Code of Conduct for United States Judges* applicable to the federally appointed judiciary in the United States, while not completely appropriate for Canadian adoption, provides a useful starting point:

³¹ *Livre* at 17.

Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

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(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C.5 These provisions seek to strike a reasonable balance between community involvement and the preservation of judicial impartiality and, although not specifically adopted in these Principles, nonetheless may provide helpful guidance.

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C.6 Subject to the discussion that follows, judges are at liberty to be members and directors of civic and charitable organizations and, of course, to exercise freedom of religion. In general, however, a judge should not allow the prestige of judicial office to be used in aid of fund raising for particular causes, however worthy. This principle suggests that judges (apart from requests to judicial colleagues) should not personally solicit funds or lend their names to financial campaigns. *Commentaries on Judicial Conduct* notes that when a judge is directly involved in fund raising there may be a temptation for lawyers or litigants who are canvassed to try to curry favour with the judge by contributing. Moreover, such solicitation identifies the judge with the objects of the organization.³² However, the simple appearance of the judge's name as a director (or similar position) on the organization's general letterhead is not inappropriate.

C.7 Judges must carefully assess whether to serve on Boards of Directors of organizations other than those serving the professional or educational requirements of judges. It is inappropriate (and prohibited) for a judge to serve on the Board of Directors of a commercial enterprise.³³

C.8 What is the position with respect to volunteer service on boards of community, charitable, religious or educational organizations? Many institutions solicit and/or receive money from government. Except for funds required for the proper administration of justice, it is not appropriate for the judge to be directly involved in soliciting funds from government. Boards of Directors are responsible for the conduct of the organization. The organization may become involved in disputes with staff or others, sue or be sued, breach government regulations of all sorts or otherwise be implicated in matters of public controversy.

³² *Commentaries* at 18-19.

³³ *Judges Act*, R.S.C. 1985, c.J-1, s.55. (See note 12.)

Any of these situations could be embarrassing for the judge or his or her colleagues and might give rise to reasonable apprehension of a lack of impartiality with respect to certain issues that might arise for judicial consideration. Fellow directors may seek and rely upon the judge's advice on legal matters. But it is inappropriate for the judge to give such advice. The decision to serve must be made after carefully weighing these risks in the particular circumstances.

C.9 Several Canadian judges have served as chancellors of universities or dioceses. Others have served on the boards of schools, hospitals or charitable foundations. Such participation may now present risks that did not appear evident in the past. These risks must be carefully weighed. Universities, churches and charitable and service organizations are now involved in litigation and matters of public controversy in ways that were virtually unheard of even in the very recent past. A judge serving as a chancellor of a university or a diocese or as a board member may be placed in an awkward position if the organization should become involved in litigation or matters of public controversy.

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C.10 Requests for letters of reference may be difficult for a judge. There are certainly factors a judge will want to consider before agreeing to provide such a letter. One is that the judge should avoid being seen as using the prestige of judicial office to advance a person's private interests. The judge must also avoid giving the impression that certain persons stand in a particular position of influence or favour with the judge. These factors combine to suggest that the judge should agree to give a reference only where it is clear, first, that it is the judge's knowledge of the individual that is called for and not simply the status of the judge and, second, where the judge has an important perspective about the individual to contribute such that it would be unfair to the individual and the selection process were the judge to refuse.

Commentaries reports that a large majority of the judges who responded to the questionnaire leading to the production of that text approved a judge's giving character references. *Commentaries* also noted however that the practices of judges vary and that a number of respondents professed some reluctance.³⁴ While this matter is one on which judges differ, the two part test set out in the preceding paragraph is offered as an approach that strikes an acceptable balance between the desirability of obtaining the benefit of the judge's views while minimizing the risk of undermining the judge's neutrality.

Commentaries states that judges may properly assist judicial appointment advisory committees on a strictly confidential basis. More generally, the commentary on the *ABA Model Code (1990)* addresses the matter as follows:

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Although a judge should be sensitive to possible abuse of the prestige of office, a judge may provide a letter or recommendation based on the judge's personal knowledge. A judge also may permit the use of the judge's name as a reference, and respond to a request for a personal recommendation when solicited by a selection of authorities, such as a prospective employer, Judicial Selection Committee or Law School Admissions Office.³⁵

Once again, it is suggested that the two part test proposed for letters of reference generally strikes the right balance in the specific context of judicial appointments even though the result is a somewhat more restrictive approach than that of *ABA Model Code (1990)*.

³⁴ *Commentaries* at 33-35.

³⁵ *ABA Model Code (1990)*, Commentary to Canon 2B.

D. Political Activity

D.1 This section deals with out of court activities of judges. In particular, it addresses political activity and other conduct such as memberships in groups or organizations or participation in public debate and comment which, from the perspective of a reasonable, fair minded and informed person could undermine a judge's impartiality as regards issues that could come before the courts.

D.2 Commentators are unanimous that "all partisan political activity and association must cease absolutely and unequivocally with the assumption of judicial office."³⁶ Two considerations support this rule. Impartiality, actual and perceived, is essential to the exercise of the judicial function. Partisan political activity or out of court statements concerning issues of public controversy by a judge undermine impartiality. They are also likely to lead to public confusion about the nature of the relationship between the judiciary on the one hand and the executive and legislative branches on the other. Partisan actions and statements by definition involve a judge in publicly choosing one side of a debate over another. The perception of partiality will be reinforced if, as is almost inevitable, the judge's activities attract criticism and/or rebuttal. This in turn tends to undermine judicial independence.³⁷ In short, a judge who uses the privileged platform of judicial office to enter the political arena puts at risk public confidence in the impartiality and the independence of the judiciary.

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³⁶ *Commentaries* at 9; see also *Livre* at 28; *Shaman* at 360 ff; *Wilson* at 7; Judges in Canada (as in the U.S. and England) are entitled to vote and there is nothing unethical in doing so.

³⁷ *Russell* at 87-88.

D.3 Principles D.3(a) and (b) are widely accepted examples of overt political activity in which judges should not engage after appointment.³⁸ Judges should also consider whether mere attendance at certain public gatherings might reasonably give rise to a perception of ongoing political involvement or reasonably put in question the judge's impartiality on an issue that could come before the court.

D.4 Principle D.3(c) counsels against making contributions to political parties. The rationale of this advice is that the judge should not be identified with the political process or, subject to principle D.3(d), with specific positions on matters of political controversy. The Nova Scotia Judicial Council was confronted with a complaint that a judge had contributed to a political party's fund to alleviate the financial distress of its former leader who was a friend and classmate of the judge. The judge had also contributed to the political campaigns of close relatives and made three other undesignated contributions to the same political party. The Nova Scotia Judicial Council cautioned the judge, reasoning that:

The public perception, we believe, is that where a judge makes a financial contribution to such highly placed political persons, as the three who benefitted from the gifts of this judge, it is impossible to separate them from the political organizations of which they are a part... Since, in our opinion, donations of money are but one way of participating in a political organization, the making of them is deemed to be political activity in which a judge should not engage.³⁹

³⁸ See e.g. *Wilson* at 7-9; *Thomas* at 156.

³⁹ Nova Scotia Judicial Council, *Report Concerning the Conduct of His Honour Paul S. Niedermeyer*, June 17, 1991. (Hereafter "Niedermeyer Ruling.")

D.5 The application of Principle D.3(d), which counsels avoidance of public participation in controversial political discussions, is more open to debate and problems of application than the other principles in this section. Judges on appointment do not surrender all of the rights to freedom of expression enjoyed by everyone else in Canada. But, the office of judge imposes restraints that are necessary to maintain public confidence in the impartiality and independence of the judiciary. In defining the appropriate degree of involvement of the judiciary in public debate, there are two fundamental considerations. The first is whether the judge's involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attack or be inconsistent with the dignity of judicial office. If either is the case the judge should avoid such involvement.

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D.6 Principle D.3(d) recognizes that, while restraint is the watchword, there are limited circumstances in which a judge may properly speak out about a matter that is politically controversial, namely, when the matter directly affects the operation of the courts, the independence of the judiciary (which may include judicial salaries and benefits), fundamental aspects of the administration of justice, or the personal integrity of the judge. Even with respect to these matters, however, a judge should act with great restraint. Judges must remember that their public comments may be taken as reflective of the views of the judiciary; it is difficult for a judge to express opinions that will be taken as purely personal and not those of the judiciary generally. There are usually alternatives to public discussion. For example, the chief justice of the court may raise the matter formally with the appropriate official or officials. Except for statutory and constitutional duties and matters affecting the operation of the courts or the proper administration of justice, chief justices are in no different position than their colleagues.



The Principle suggests a somewhat larger sphere for such interventions than that described in the 1982 comments of the Canadian Judicial Council in the Berger matter. In dealing with that complaint, the Council stated that judges should not speak on controversial political matters that do not directly affect the operation of the courts. The suggestion here is that, having regard to judges' special knowledge and experience in matters relating to the administration of justice and their obligation to preserve judicial independence, the proper ambit for their out of court interventions may be somewhat wider in appropriate cases. Where the terms of reference require, judges serving on Commissions of Inquiry may exercise greater latitude in commenting on issues relevant to the inquiry. Judges serving in this way, however, must continue to bear in mind that they are judges even while serving for the time being as commissioners.

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D.7 Nothing in these Principles prevents or indeed discourages judicial participation in law reform or other scholarly or educational activities of a nonpartisan nature directed to the improvement of the law and the administration of justice. Judges seconded to law reform commissions may exercise greater latitude with respect to matters under consideration by the Commission. The Commentary to the *ABA Model Code (1990)* indicates that "...[a]s a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system and administration of justice... Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession."⁴⁰ However, when engaging in such activities, the judge must not be seen as "lobbying" government or as indicating how he or she would rule if particular situations were to come before the judge in court. This, of course, does not prevent judges from making representations to government concerning judicial independence or, through the appropriate mechanisms, with respect to salaries

⁴⁰ *ABA Model Code (1990)*, Commentary to Canon 4B.

and benefits. Discussion of the law for educational purposes or pointing out weaknesses in the law in appropriate settings is in no way discouraged. For example, in certain special circumstances, judicial commentary on draft legislation may be helpful and appropriate, so long as the judge avoids giving informal interpretations or opinions on constitutionality.⁴¹ Normally, judicial commentary on proposed legislation or on other questions of government policy should relate to practical implications or legislative drafting and should avoid issues of political controversy. In general, such judicial commentary should be made as part of a collective or institutionalized effort by the judiciary, not that of an individual judge.

D.8 Principle D.3(e) suggests that judges should not sign petitions to influence political decisions. Petitions are an example of a situation in which a judge is likely to be perceived as supporting a particular point of view or as lobbying, albeit rather passively, to bring about change. As the Nova Scotia Judicial Council put it, the requirement of complete severance from all political activities means that “a judge shall not try to influence politicians or political issues.”⁴² This is precisely the purpose of petitions.

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D.9 The duties of chief justices and, in some cases, those of other judges having administrative responsibilities will lead to contact and interaction with government officials, particularly the attorneys general, the deputy attorneys general and court services officials. This is necessary and appropriate, provided the occasions of such interactions are not partisan in nature and the subjects discussed relate to the administration of justice and the courts and not to individual cases. Judges, including chief justices, should take care that they are not perceived as being advisors to those holding political office or to members of the executive.

⁴¹ The Canadian Judicial Council, for example, struck a special committee which reviewed proposals for a new General Part of the *Criminal Code* and facilitated meetings between senior government officials and judges to discuss child support guidelines.

⁴² *Niedermeyer Ruling* at 12.

E. Conflicts of Interest

E.1 Judges should organize their personal and business affairs to minimize the potential for conflict with their judicial duties. Notwithstanding the judge's best efforts, situations will arise in which the appearance of justice requires the judge to disqualify himself or herself. The issues to be addressed in this section are: (1) what constitutes a conflict of interest? (2) in what circumstances should a judge disclose circumstances which may constitute a conflict of interest? (3) in what circumstances will consent of the parties obviate the need for the judge to be disqualified? and (4) in what circumstances will it be necessary for a judge to preside even though there is an apparent conflict of interest? Each will be addressed in turn.

E.2 What Constitutes a Conflict of Interest?

As Perell puts it, "A common or unifying theme for the various classes of conflicts of interest is the theme of divided loyalties and duties."⁴³ The potential for conflict of interest arises when the personal interest of the judge (or of those close to him or her) conflicts with the judge's duty to adjudicate impartially. Judicial impartiality is concerned both with impartiality in fact and impartiality in the perception of a reasonable, fair minded and informed person. In judicial matters, the test for conflict of interest must include both actual conflicts between the judge's self interest and the duty of impartial adjudication and circumstances in which a reasonable fair minded and informed person would reasonably apprehend a conflict.

E.3 A number of texts and commentaries offer guidance to judges on this subject. The Hon. J.O. Wilson in *A Book for Judges*, for example, says a judge's disqualification would be justified by a pecuniary interest in the outcome; a close family, personal or professional relationship with a litigant, counsel or witness; or the judge having expressed views evidencing bias regarding a litigant.⁴⁴

⁴³ Paul M. Perell, *Conflicts of Interest in the Legal Profession* (1995) at 5.

⁴⁴ *Wilson* at 23.

E.4 The *Code of Civil Procedure* of Quebec is unique in Canada in offering authoritative guidance. The subject of disqualification is expressly addressed in articles 234 and 235. Included among the grounds for disqualification are, for example, the judge being related to one of the parties within the degree of first cousin, having acted for one of the parties, having an interest in the outcome, etc.⁴⁵

E.5 As elsewhere in this area, the concern is with reasonable perception, as well as actual conflict of interest. In general, a judge should not preside over a case in which he or she has a financial or property interest that could be affected by its outcome or in which the judge's interest would give rise in a reasonable, fair minded and informed person, to reasoned suspicion that the judge would not act impartially.⁴⁶ This general rule applies whether the interest is itself the subject matter of the controversy or where the outcome of the case could substantially affect the value of any interest or property owned by the judge, the judge's family or close associates. It will not apply where the judge's interest is limited to one shared by citizens generally.

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E.6 This broadly formulated rule cannot be strictly applied, however. Owning an insurance policy, having a bank account, using a credit card or owning shares in a corporation through a mutual fund would not, in normal circumstances give rise to conflict or the appearance of conflict unless the outcome of the proceedings before the judge could substantially affect such holdings. Nor should small holdings, such as those contemplated by the *de minimis* provisions of *ABA Model Code (1990)* give rise to any reasonable question concerning the judge's impartiality.⁴⁷ However, if the holding is more substantial, the judge should not sit, subject to considerations of necessity discussed in section E.17.

⁴⁵ *Code of Civil Procedure*, art. 234-235.

⁴⁶ *Shaman* at 136; the language is modelled on that of Rand, J. in *Szilard v. Szasz*, [1965] S.C.R. 3 at 4.

⁴⁷ See note 28; *de minimis* is defined as being "an insignificant interest that could not raise a reasonable question as to the judge's impartiality."

E.7 Should interests of members of the judge's family, close friends or associates be considered as giving rise to a perception of conflict of interest? As a matter of broad general principle, one can imagine circumstances in which the interests of the judge's family, close friends or associates in matters before the judge could give rise to a reasonable apprehension of conflicting interest and duty. To attempt to define these matters with greater precision, however, is another matter. Article 234(1) and (9) of the *Code of Civil Procedure* define precisely the degree of family relationship with parties or counsel which requires recusal. Article 235 refers to the personal interest of the judge or "his consort" as justifying recusal. *ABA Model Code (1990)* defines the degree of family relationship which should lead to disqualification.⁴⁸

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E.8 While these approaches introduce much needed clarity, it may come at the expense of attention to the general principle that a judge (subject to the discussion in section E.17 below) should disqualify him or herself if aware of any interest or relationship which, to a reasonable, fair minded and informed person would give rise to reasoned suspicion of lack of impartiality. For the purposes of national principles of judicial ethics for Canada, the temptation to become more specific than this should be avoided.

⁴⁸ See for example, Canon 3E(d):

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

"Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

E.9 Personal insolvency and bankruptcy give rise to a variety of potential difficulties for judges. Whether, and if so in what circumstances, these difficulties will provide grounds for removal of a judge is not an issue that falls within the range of questions addressed by these Principles. As the *Bankruptcy Act*, section 175, recognizes, bankruptcy may occur by misfortune and without misconduct. For instance, a judge could be held liable for a defalcation of a former law partner or for an accident involving the judge's vehicle driven by his or her spouse or child. Having regard to this fact, no general rule can, or should be formulated.

E.10 The judge who is in financial difficulty will have to be particularly vigilant for conflicts of interest, both actual and perceived. There will be difficulties in the judge presiding over matters involving any of his or her creditors or, perhaps, other matters raising similar issues. Serious questions arise if any aspect of the judge's financial difficulties becomes contentious. In this event, the possibility of the judge appearing before a judicial colleague as a party or a witness would arise. The actual day-to-day impact of the financial difficulties on the judge's ability to perform the job will obviously vary considerably depending on the circumstances and the size of the jurisdiction. Circumstances which might cause very minor inconvenience to a large court might nonetheless have a significant practical impact on a smaller court. Once again, however, it seems impossible and unwise to try to deal with the scores of possibilities other than through application of the general principle that, where a reasonable, fair minded and informed person would have a reasoned suspicion that the judge will not be impartial, the judge should not sit. In certain circumstances, the principles relating to diligence might also be relevant if the judge's conflicts were so extensive that they effectively prevented the judge from carrying out his or her duties. A judge's bankruptcy may raise many of these issues in acute form. When judges become aware of financial or other similar circumstances likely to affect public perception of their impartiality, they should draw them to the attention of their chief justices.

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E.11 Disclosure

The absence in Canada of a general statutory requirement for financial disclosure does not resolve the ethical question of when a judge should disclose to the parties a matter which might be considered as giving rise to a potential conflict of interest. The position in England and Australia appears to be that the judge should disclose any interest or factor which might suggest that the judge should be disqualified.⁴⁹ This approach, however, is premised on the view that the disclosure is made with a view to seeking the consent of the parties for the judge to hear the case.

E.12 Whether there are circumstances in which the consent of the parties is essential to permit the judge to hear the case is the subject of the next section. However, the issues of disclosure and consent are not necessarily linked. For now, it can be concluded that a judge should disclose on the record anything which might support a plausible argument in favour of disqualification.

E.13 Consent of the Parties

Commentaries on Judicial Conduct acknowledges the practical difficulty of attempting to cure a concern about disqualification by disclosure to and consent of the parties. The main concern is that such an approach puts counsel in an unfair position — as one respondent put it, to either consent or to risk being seen as a trouble maker.⁵⁰

E.14 It is not suggested that consent of the parties would justify a judge continuing in a situation in which he or she felt that disqualification was the proper path. The issue of consent, therefore, arises only in those cases in which the judge believes that there is an arguable point about disqualification but in which the judge believes, at the end of the day, a reasonable person would not apprehend a lack of impartiality. Putting the matter this way perhaps highlights the difficult position in which counsel

⁴⁹ See for example, *Shetreet* at 305; *Thomas* at 53-55; *Commentaries* at 72; *Wilson* at 30-31.

⁵⁰ *Commentaries* at 74.

is placed. By disclosing the matter and seeking consent to continue, the judge is in essence saying that no reasonable person should apprehend a lack of impartiality. Therefore, if counsel fails to consent, counsel (or their clients) may appear to be taking an unreasonable position. A partial answer to this concern may be to adopt the English practice in which the judge is told that an objection was made by one of the parties without being told which side objected.⁵¹

E.15 The better approach is for the judge to make the decision without inviting consent, perhaps in consultation with his or her chief justice or other colleague. If the judge concludes that no reasonable, fair minded and informed person, considering the matter, would have a reasoned suspicion of a lack of impartiality, the matter should proceed before the judge. If the conclusion is the opposite, the judge should not sit.

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E.16 The judge should make disclosure on the record and invite submissions from the parties in two situations. The first arises if the judge has any doubt about whether there are arguable grounds for disqualification. The second is if an unexpected issue arises shortly before or during a proceeding. The judge's request for submissions should emphasize that it is not counsel's consent that is being sought but assistance on the question of whether arguable grounds exist for disqualification and whether, in the circumstances, the doctrine of necessity applies.

E.17 Necessity

Extraordinary circumstances may require departure from the approaches discussed above. The principle of necessity holds that a judge who would otherwise be disqualified may hear and decide a case where failure to do so could result in an injustice. This might arise where an adjournment or mistrial would work undue hardship or where there is no other judge reasonably available who would not be similarly disqualified.⁵²

⁵¹ See *Shetreet* at 305.

⁵² See, for example, *Wilson* at 29; *Shaman* at 99-101 and *Shetreet* at 304.

E.18 Acting as Executor

There is a range of views as to whether a judge should serve as an executor. Shetreet describes the English practice in which judges may serve as executors of estates of friends or relatives, provided there is no remuneration, the judge is not involved in the day-to-day administration of the estate and the required work does not interfere with his or her judicial duties.⁵³ In the United States, the *ABA Model Code (1990)* deals with this point as follows:

4E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.⁵⁴

In Canada, *A Book for Judges*, *Le livre du magistrat*⁵⁵ and *Commentaries on Judicial Conduct*⁵⁶ agree that, as a general rule, the judge should not act but that it is permissible to do so if the estate is of a

⁵³ Shetreet at 331.

⁵⁴ *ABA Model Code (1990)*, Canon 4E.

⁵⁵ *Livre* at 24.

⁵⁶ *Commentaries* at 35-6.

relative or close friend and it appears to be simple and not contentious. Should these predictions prove wrong, these authorities all advise the judge to retire from the executorship.

In summary, it is suggested that a sound approach to the question is as follows:

1. As a general rule, a judge should not act as an executor.

2. It is not improper for a judge to so act if:

(a) he or she does so without fee;

(b) the estate is of a close friend or relative;

(c) it is unlikely to be contentious; and,

(d) performance of the obligations will not interfere with judicial duties.

3. Having embarked on the executorship, the judge should retire from it if the estate becomes contentious or if the executorship interferes with the performance of judicial duties.

E.19 Former Clients

Judges will face the issue of whether they should hear cases involving former clients, members of the judge's former law firm or lawyers from the government department or legal aid office in which the judge practised before appointment. There are three main factors to be considered. First, the judge should not deal with cases concerning which the judge actually has a conflict of interest, for example, as a result of having had confidential information concerning the matter prior to appointment. Second, circumstances must be avoided in which a reasonable, fair minded and informed person would have a reasoned suspicion that the judge is not impartial. Third, the judge should not withdraw unnecessarily as to do so adds to the burden of his or her colleagues and contributes to delay in the courts.

The following are some general guidelines which may be helpful:

(a) A judge who was in private practice should not sit on any case in which the judge or the judge's former firm was directly involved as either counsel of record or in any other capacity before the judge's appointment.

(b) Where the judge practised for government or legal aid, guideline (a) cannot be applied strictly. One sensible approach is not to sit on cases commenced in the particular local office prior to the judge's appointment.

(c) With respect to the judge's former law partners, or associates and former clients, the traditional approach is to use a "cooling off period," often established by local tradition at 2, 3 or 5 years and in any event at least as long as there is any indebtedness between the firm and the judge and subject to guideline (a) above concerning former clients.

(d) With respect to friends or relatives who are lawyers, the general rule relating to conflicts of interest applies, i.e., that the judge should not sit where a reasonable, fair minded and informed person would have a reasoned suspicion that the judge would not be impartial.

Related issues, requiring similar approaches, may arise in relation to overtures to the judge while still on the bench for post-judicial employment. Such overtures may come from law firms or prospective employers. There is a risk that the judge's self-interest and duty would appear to conflict in the eyes of a reasonable, fair minded and informed person considering the matter. A judge should examine such overtures in this light. It should also be remembered that the conduct of former judges may affect public perception of the judiciary.

APPENDIX-F

ONTARIO JUDICIAL COUNCIL – REASONS FOR DECISION

F-1 – F-4

IN THE MATTER OF a complaint respecting
The Honourable Madam Justice Dianne Nicolas

F-5 – F-25

IN THE MATTER OF complaints respecting
The Honourable Justice Kerry P. Evans

ONTARIO JUDICIAL COUNCIL

IN THE MATTER OF a complaint respecting The Honourable Madam Justice Dianne Nicholas

BEFORE: The Honourable R. Roy McMurtry – Chief Justice of Ontario
The Honourable David Wake – Associate Chief Justice of the Ontario Court of Justice
Mr. Julian Porter, Q.C.
Mr. William James

COUNSEL: Mr. Douglas C. Hunt, Q.C. and Mr. Michael Meredith, Presenting Counsel
Mr. David Scott, Q.C. Counsel to Madam Justice Nicholas

REASONS FOR DECISION

The Ontario Judicial Council (the “Council”), pursuant to section 51.4 (18) and 51.6 of the *Courts of Justice Act*, R.S.O. 1990, c.43, as amended, conducted a hearing in relation to the Honourable Madam Justice Dianne Nicholas on June 29, 2004.

An agreed Statement of Facts was filed at the hearing which included a joint submission with respect to the nature of the conduct acknowledged by Justice Nicholas and the degree of its seriousness.

A brief of letters of support for Justice Nicholas was also filed.

The Agreed Facts

The facts are summarized as follows:

The complainant, Silvana Segreto appeared with her counsel, Ronald Guertin, before Justice Nicholas in Ottawa on April 29, 2002 with respect to a welfare fraud allegation.

Ms. Segreto pleaded guilty to a charge of welfare fraud. The complainant’s counsel wished to have the sentencing put over to permit him to present medical information regarding physical and psychological

injuries which Ms. Segreto sustained as a result of the alleged alienation of her father’s estate by one of her brothers. Following this remark, Justice Nicholas asked Ms. Segreto if her brother was Rick Segreto. Ms. Segreto replied that he was.

Justice Nicholas indicated that she knew Rick Segreto, indicating “he used to be my daughter’s soccer coach and I really didn’t like him so...”, and then, “he’s got a criminal record”.

Justice Nicholas was concerned that Ms. Segreto and her counsel be apprised of the fact that she had known Rick Segreto personally in the event that they wished the matter to proceed before another judge.

Ms. Segreto’s counsel indicated it was “Okay”. Ms. Segreto indicated her family did not speak with Rick Segreto. Justice Nicholas then replied “Are you sure because like I don’t want - I’m not going to take it out on your client, but I’m just [sic] my policy is if I know anybody, I say so”.

Ms. Segreto again indicated that her family did not speak with her brother and that he had caused a lot of anguish for the family, was not included in her father’s will and was alienated from the rest of the family.

Justice Nicholas replied that he was a “loser” and that he “basically left his wife and two children for the mother of one of our team who was the manager”. She also stated “...he actually took up with one of the mothers on the team. Not a big fan of that. I pulled my daughter off the team. So, I’m just letting you know that if you want somebody else to do this...” and then said “I don’t think it’s a problem, but I’m just letting you know”.

Mr. Guertin requested and was granted time to confer with his client in the courtroom and then advised Justice Nicholas that Ms. Segreto was comfortable.

Justice Nicholas referred again to the alienation of the estate, indicating “That’s why I asked if he was the one who alienated the estate, because I wouldn’t put that past him”.

Justice Nicholas accepted Ms. Segreto’s guilty plea and put the matter over to July 24, 2002 for sentencing.

Shortly after the April 29, 2002 plea, but before the sentencing date of July 24, 2002 while the Segreto matter was still before her, Justice Nicholas spoke of the matter with one Thomas Grumley when they met up, coincidentally on the street directly across from the courthouse.

Justice Nicholas has known Mr. Grumley as a neighbour and involved with a number of fellow soccer parents for approximately ten years. They lived within blocks of each other and Mr. Grumley worked directly across from the courthouse at Place Bell Canada.

Although the case was still before her, Justice Nicholas advised Mr. Grumley that Ms. Segreto had appeared before her and pled guilty to a welfare fraud charge. She told Mr. Grumley that it was not very serious and that Ms. Segreto seemed nice.

Ms. Segreto later learned of this conversation from her niece, daughter of Rick Segreto. According to Ms. Segreto, her niece had heard it from Mr. Grumley’s children, who in turn had heard it from Mr. Grumley over dinner.

In her complaint, Ms. Segreto alleges that “Justice Nicholas passed on every imaginable detail” of her case to Mr. Grumley. Mr. Grumley disagrees and has

communicated directly with the Judicial Council on this issue, indicating that Justice Nicholas only told him that Rick Segreto’s sister appeared before her and that she was found guilty in a welfare fraud case. Mr. Grumley states that the other assertions made by Ms. Segreto as reported in the Ottawa Citizen are false.

Justice Nicholas acknowledges she should not have spoken to Mr. Grumley about the Segreto case and that it was inappropriate. Justice Nicholas feels terrible about the effect this may have had on Ms. Segreto and her family and that this embarrassed Ms. Segreto.

Shortly after Ms. Segreto’s complaint was made to the Ontario Judicial Council on August 19, 2002, the Ottawa Citizen reported on the complaint and published articles both in print and electronically, setting out the details of the April 29th court proceeding, the conversation with Thomas Grumley and Ms. Segreto’s reaction to it.

On the sentencing date of July 24th, counsel for Ms. Segreto moved for Justice Nicholas to recuse herself on the basis of her conversation with Mr. Grumley. Justice Nicholas immediately struck the guilty plea and suggested that the matter be transferred to the guilty plea court that very day to be dealt with by another judge. Mr. Guertin wished to consider his position.

After striking the plea, Justice Nicholas returned to Judges’ Chambers on the 6th floor of the courthouse. She then felt that she should have apologized to Ms. Segreto and her counsel and asked the receptionist to page Mr. Guertin to come up to her office so that she could make an apology.

Mr. Guertin did not attend Judges’ Chambers. Justice Nicholas returned to the courtroom shortly thereafter to deal with her trial matters. She asked her courtroom clerk, Lucille Bordeleau to locate Mr. Guertin and his client and have them return to the courtroom.

Ms. Bordeleau found Mr. Guertin and asked him that he attend in the courtroom. Counsel has stated he was asked to attend in Chambers. On this point the evidence of Mr. Guertin and Ms. Bordeleau varies. Ms. Bordeleau has stated that her intention was to bring Mr. Guertin back to the courtroom where Justice Nicholas was waiting on the bench.

Mr. Guertin has indicated that he advised the courtroom clerk that he had sought legal advice and considered it would be inappropriate for him to speak to Justice Nicholas on the matter.

There is no suggestion that Justice Nicholas summoned counsel to her judicial chambers or to the courtroom for any other purpose than to apologize.

Justice Nicholas indicated in her letter that she sincerely regretted the position in which counsel and Ms. Segreto were placed and said the request for the recusal was “completely appropriate”. Justice Nicholas had conferred with a senior judge of the court on the content of the letter before sending it.

Issue of Misconduct

Justice Nicholas acknowledges that her statements in court on April 29, 2002, as described above and her subsequent conversation with Mr. Grumley constitutes judicial misconduct on her part.

Joint Submission

Justice Nicholas agrees and acknowledges that her conduct was inappropriate and indiscreet and that her judicial misconduct is a serious matter. Her counsel and presenting counsel agree and jointly submit that this judicial misconduct acknowledged by Justice Nicholas “though serious, falls within the lower end of the scale of judicial misconduct. Accordingly, it should attract a sanction, proportional to its gravity, within the lower end of the scale of sanctions for judicial misconduct. Counsel submit that a sanction in accordance with section 51.6(11)(a) through (d) is the appropriate sanction in this case.”

The dispositions contained in section 51.6(11) are as follows:

- (a) warn the judge;
- (b) reprimand the judge;
- (c) order the judge to apologize to the complainant or to any other person;

- (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- (e) suspend the judge with pay, for any period;
- (f) suspend the judge without pay, but with benefits, for a period of up to thirty days; or
- (g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8.

Letters of Support

As noted earlier a brief of letters of support for Justice Nicholas was filed which included letters from two sitting justices of the Superior Court of Justice, one former justice of the Superior Court, one justice from the Ontario Court of Justice and four senior criminal defence lawyers, one of whom being formerly a senior Crown Attorney.

The letters make the following observations about Justice Nicholas:

- (a) she is a sound judge;
- (b) she has a tendency to speak frankly in the courtroom which is related to her motivation to “demystify the court process”;
- (c) she has all the right instincts and is an extremely caring person;
- (d) she takes on very difficult cases and is generally extremely hardworking;
- (e) she is a person of high integrity;
- (f) she generally demonstrates very good judgment and an excellent knowledge of the law.

Complainant’s View

The complainant agrees with the joint submission in its entirety.

APPENDIX I

REASONS FOR DECISION – D. NICHOLAS

Conclusion

We are satisfied that Justice Nicholas is mortified and embarrassed by her conduct as submitted by her counsel. She was also motivated to admit her misconduct spontaneously and expeditiously and made a sincere apology. She is clearly embarrassed by the media reporting which has given the complaint to the Council wide coverage.

The panel is satisfied that Justice Nicholas has completely accepted the seriousness of her misconduct and would appreciate that any repetition could attract a more serious disposition.

We believe that it is in the best interests of the administration of justice that Justice Nicholas continue to sit as a judge as she has done since the complaint was filed almost two years ago.

Costs

There will be no recommendation as to the payment of costs pursuant to section 51.7(4) of the *Courts of Justice Act*.

DATED at the City of Toronto, in the
Province of Ontario, July 12th, 2004.

Chief Justice R. Roy McMurtry
Associate Chief Justice David Wake
Mr. Julian Porter, Q.C.
Mr. William James



REASONS FOR DECISION – K.P. EVANS

IN THE MATTER OF complaints respecting
The Honourable Justice Kerry P. Evans

COUNSEL:	Mr. Douglas C. Hunt, Q.C.]	
	Mr. Michael J. Meredith]	Presenting Counsel
	Mr. Donald Park]	
	Mr. Brian H. Greenspan]	Counsel for The Honourable
	Mr. Seth P. Weinstein]	Justice Kerry P. Evans

[4] First, the Council considered the meaning of judicial misconduct. We were guided by the reasons of the Supreme Court of Canada in *Re Therrien*, [2001] 2 S.C.R. 3 where the Court, in the context of an inquiry into the conduct of a judge, discussed the role of the judge in Canadian society. The analysis of the Court on this question is instructive and we reproduce it here in its entirety:

3. The Role of the Judge: “A Place Apart”

¶ 108 The judicial function is absolutely unique. Our society assigns important powers and responsibilities to the members of its judiciary. Apart from the traditional role of an arbiter which settles disputes and adjudicates between the rights of the parties, judges are also responsible for preserving the balance of constitutional powers between the two levels of government in our federal state. Furthermore, following the enactment of the Canadian *Charter*, they have become one of the foremost defenders of individual freedoms and human rights and guardians of the values it embodies: *Beauregard*, *supra*, at p. 70, and *Reference re Remuneration of Judges of the Provincial Court*, *supra*, at para. 123. Accordingly, from the point of view of the individual who appears before them, judges are first and foremost the ones who state the law, grant the person rights or impose obligations on him or her.

¶ 109 If we then look beyond the jurist to whom we assign responsibility for resolving conflicts between parties, judges also play a fundamental role in the eyes of the external observer of the judicial system. The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, but they are asked to embody them (Justice Jean Beetz, Introduction of the first speaker at the conference marking the 10th anniversary of the Canadian Institute for the Administration of Justice, observations collected in *Mélanges Jean Beetz* (1995), at pp. 70-71).

¶ 110 Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that,

public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

(Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

¶ 111 The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens. This is eloquently expressed by Professor Y.-M. Morissette:

[TRANSLATION] [T]he vulnerability of judges is clearly greater than that of the mass of humanity or of “elites” in general: it is rather as if his or her function, which is to judge others, imposed a requirement that he or she remain beyond the judgment of others.

(“*Figure actuelle du juge dans la cité*” (1999), 30 R.D.U.S. 1, at pp. 11-12)

In *The Canadian Legal System* (1977), Professor G. Gall goes even further, at p. 167:

The dictates of tradition require the greatest restraint, the greatest propriety and the greatest decorum from the members of our judiciary. We

expect our judges to be almost super-human in wisdom, in propriety, in decorum and in humanity. There must be no other group in society which must fulfil this standard of public expectation and, at the same time, accept numerous constraints. At any rate, there is no question that a certain loss of freedom accompanies the acceptance of an appointment to the judiciary.

[5] It is readily apparent from this analysis that a wide spectrum of conduct may constitute misconduct deserving of reprobation. This is consonant with the terms of s. 51.6(11) of the *Courts of Justice Act* which contemplates a range of possible sanctions:

51.6 (1) When the Judicial Council decides to hold a hearing, it shall do so in accordance with this section.

(11) After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may,

- (a) warn the judge;
- (b) reprimand the judge;
- (c) order the judge to apologize to the complainant or to any other person;
- (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- (e) suspend the judge with pay, for any period;
- (f) suspend the judge without pay, but with benefits, for a period up to thirty days; or
- (g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8.

[6] Hence, there may be instances of judicial misconduct ranging from conduct that is more minor in nature, meriting a warning or a reprimand, to conduct that is so serious that it warrants removal from office. The Supreme Court of Canada described

the kind of conduct that would merit the heaviest sanction in *Therrien* at para. 147:

Thus, before making a recommendation that a judge be removed, the question to be asked is whether the conduct for which he or she is blamed is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office (*Friedland*, supra, at pp. 80-81).

[7] The appropriate sanction remains to be determined. Counsel have not yet made their submissions on this question because, of course, the outcome of this inquiry depends on the Council's particular findings of misconduct. Hence, the Council has refrained from considering the question of sanction during the course of its deliberations. The Council was mindful, however, of the relative gravity of each allegation because the level of seriousness impacts on the requisite standard of proof.

[8] The standard of proof required to establish a complaint of professional misconduct has been defined differently over the years but now seems settled. In the *Law Society of Upper Canada v. G.N.*, [2003] L.S.D.D. No. 41 (L.S.U.C.) the panel refers to the commentary of Mr. Gavin MacKenzie, an expert on professional disciplinary proceedings, who makes the following observations in his work *Lawyers and Ethics: Professional Responsibility and Discipline*, at pages 26-40 to 26-42:

It is now established that:

- (a) The standard is a civil standard rather than the criminal standard of proof beyond a reasonable doubt, even if the misconduct alleged is also a criminal offence: *Camgoz v. College of Physicians and Surgeons (Saskatchewan)* (1989), 74 Sask. R. 73 (C.A.); *Miller v. Saskatchewan Psychiatric Nurse's Association* (1992), 103 Sask. R. 61 (Q.B.); *Bater v. Bater* (1950), 2 All E.R. 458 (C.A.); *Hryciuk v. Ontario (Lieutenant Governor)* (1994), 18 O.R. (3d) 695 (Div. Ct.); *Re Khaliq-Kareemi v. Nova Scotia (Health Services and Insurance Commission)* (1988), 84 N.S.R. (2d)

425 (T.D.), reversed on other grounds (1989), 89 N.S.R. (2nd) 388 (C.A.), leave to appeal to

S.C.C. refused (1989), 93 N.S.R. (2nd) 269 (S.C.C.); and *Glassman v. College of Physicians and Surgeons (Ontario)*, [1966] 2 O.R. 81 (C.A.);

- (b) The standard nevertheless rises in direct proportion to the gravity of the allegation and the seriousness of the consequences, and accordingly, if the allegations are serious, the trier of fact must scrutinize the cogency of the evidence with greater care than would be required, for example, in an ordinary negligence case; and
- (c) In order to find an allegation of professional misconduct or conduct unbecoming a barrister and solicitor made out, clear and convincing proof based on cogent evidence is required: *Coates v. Ontario (Registrar of Motor Vehicle Dealers and Salesman)* (1988), 52 D.L.R. (4th) 272 (Div. Ct.); *R. v. Oakes*, [1986] 1 S.C.R. 103 (S.C.C.); *Hryciuk*, (op.cit.); *Beckon v. Ontario (Deputy Chief Coroner)* (1992), 9 O.R. (3rd) 256 (C.A.); *Lanford v. General Medical Council* (1990), 1 A.C. 13 (P.C.); *Gillen v. College of Physicians and Surgeons (Ontario)* (1989), 68 O.R. (2nd) 278 (Div. Ct.).

The Council accepts and adopts these parameters.

[9] In its assessment of credibility, the Council was mindful that the task should not be approached as a credibility contest. In this respect, the Council was largely informed by the usual instructions given by a trial judge to a jury in a criminal trial, subject of course to the different standard of proof as discussed earlier.

[10] Character evidence figured prominently in this inquiry. As stated earlier, fourteen witnesses testified about Justice Evans's reputation in the community for honesty, integrity and decency. All but two of those witnesses performed some function in the legal community such as court clerk, court reporter, police officer, justice of the peace, lawyer, legal instructor, or judge. Each character witness was asked to review a book of testimonials that contained numerous supporting letters from members of the

community gathered by Justice Evans or by counsel on his behalf. Although this book did not form part of the evidence, its contents, together with the character witnesses' personal knowledge of Justice Evans, formed the evidentiary basis for their testimony.

[11] Each character witness attested to the very high regard held for Justice Evans in the community. Many witnesses attested to his caring and compassionate nature, a person who would "go to great lengths to help other people", one to whom every one would readily go for advice or for a sympathetic ear. A fellow judge described Justice Evans as the "conscience of the court." Justice Evans is also regarded as a hard worker who is incredibly devoted to legal education in the community. Everyone viewed Justice Evans as a very friendly and approachable person.

[12] In addition to this general reputation evidence, counsel for Justice Evans inquired of every witness, including the complainants, about Justice Evans's reputation for being "a close talker", and a demonstrative kind of person. The question in respect of the latter trait was couched in terms of whether Justice Evans was perceived as being "touchy-feely". Every witness agreed that Justice Evans had the habit of standing quite close to the person he would be speaking to, at times causing the person to back up. His personal space was described as much smaller than that of the average person. All agreed that Justice Evans was a very exuberant person who would come in physical contact with people when he spoke to them. He would either take someone's arm, or put his arm around someone's shoulders, slap shoulders, touch hands, or give pats on the back. Most agreed that Justice Evans would act in this way with men and women alike. The character witnesses testified that they were not offended by this approach; they viewed it simply as part of Justice Evans's friendly and enthusiastic nature. Some acknowledged, however, that some persons could be offended by such conduct. Also, some of the character witnesses who are the colleagues of Justice Evans testified that they had mentioned to him, in light conversation, but on more than one occasion, that he stands too close to them when they talk and that he

should “back off”. More will be said about this later.

[13] We have considered the character evidence in assessing the testimony of the various witnesses in accordance with the principles that apply in a criminal trial. Evidence of good character has a bearing on the improbability of the accused committing the offence and is also relevant to credibility: *R. v. Tarrant* (1981), 63 C.C.C. (2d) 385 (Ont. C.A.). In cases of alleged sexual impropriety it has often been observed that character evidence has less weight in supporting the inference that an individual is unlikely to have committed the offence charged *R. v. Profit*, [1993] 3 S.C.R. 637. After all, sexual misconduct usually occurs in private and in most cases will not be reflected in one’s reputation in the community for morality. However, though this observation has considerable force in relation to most cases of alleged sexual impropriety, to the extent that the conduct in question is said to have occurred in public places, the character evidence should be carefully considered in assessing the likelihood that the conduct occurred: *R. v. Strong*, [2001] O.J. No. 1362 (C.A.).

[14] Consonant with these principles, we have found the reputation evidence more helpful in reaching a conclusion in respect of those acts that are alleged to have occurred in public. We have also taken it into account in assessing credibility in respect of some of the private encounters that formed the subject-matter of this hearing.

[15] We have arrived at our conclusions in respect of each particular complaint based on our assessment of the evidence that specifically related to the incident in question. In assessing the cogency of that evidence, however, we have considered from time to time other allegations when the similarities between them were such that we found it improbable that the similarity was just coincidental. It is important in this respect to note that there is no allegation of collusion in this case. Nonetheless, we have carefully scrutinized the evidence regarding the timing of the complaint and any contact between the complainants. We have found no basis to suspect collaboration between the witnesses.

[16] Orders prohibiting the publication of information that may identify the witness were made in

respect of five of the eight complainants. These orders were made at the request of each complainant, pursuant to s. 51.6(9) of the *Courts of Justice Act*. Because of the particular circumstances of one of the complainants, the precise scope of the publication ban that would effectively protect her privacy was determined *in camera*, after hearing submissions from all concerned, including the complainant’s counsel and counsel for the *Toronto Star* and the *Globe and Mail*. As a result, the ban against publication in respect of this complainant is somewhat wider than the usual order. In keeping with the spirit of the publication bans, we will not refer to any of the complainants by name, thereby better ensuring the anonymity of the complainants who have sought protection. We will refer to each complainant by the use of initials that do not correspond to their actual names. In addition, we will not refer to the particular duties of employment held by any of the complainants. Suffice it to say that all the complainants were one of the following: court clerk, court reporter, judge’s secretary or probation officer.

[17] We will deal with the allegations of each complainant in turn. Before doing so, we make the following general observations about Justice Evans’s notorious habit of coming in close contact and touching the people with whom he communicates. We say at the outset that we recognize this habit as a feature that reflects the many fine qualities that were described about Justice Evans as a warm, caring, compassionate, friendly, approachable, energetic, and even exuberant person. Undoubtedly, these personality traits have generally served him, and the community, very well. However, as a number of the character witnesses themselves have expressly recognized, it is plain to see how this behaviour can be considered by some as intrusive and offensive.

[18] Much depends on who is at the receiving end. It is one thing to act in this manner with friends, relatives, or colleagues who stand on a more equal footing, but quite another with a subordinate employee. It is unrealistic, and also unfair, to expect that the employee will confidently, without fear of recrimination, stand his or her ground against a person in authority to ensure respect of his or her private space. The gender of the employee, in this

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case they are all female, adds another dimension to the issue of closeness. Where the employee is of the opposite gender, there is an added risk that the conduct, witting or otherwise, will be perceived by the employee as violative of her sexual integrity. Indeed, any touching to the buttocks, legs or pelvic/genital area that is not immediately acknowledged by an apology would be reasonably construed as an undesired sexual contact.

[19] Hence, the onus cannot be on the employee to mark the boundary. It must be on Justice Evans. As will become apparent from our analysis, it is our view that Justice Evans has demonstrated on a number of occasions a disturbing insensitivity to other persons' comfort zones. On other occasions, he has clearly crossed the line.

Ms. A

[20] We will start firstly with the testimony of Ms. A, as some of the incidents that she related appear to have occurred earliest in time, probably in 1999. Ms. A had occasion to go to Justice Evans's chambers from time to time to have some documentation signed. She appeared to us and was described as a highly professional, very private, and somewhat nervous person. Ms. A testified that there was more than one occasion where Justice Evans made her feel uncomfortable because he was standing too close to her, patting or rubbing her arm, patting her on the back of the shoulder or neck. She stated that she told him in light conversation on two occasions that he was a little close and to keep a few feet away. He would then move away. She testified that she lied to Justice Evans about being married to a police officer because she wanted Justice Evans to believe that she was involved with someone. Justice Evans agreed that this was one of the very first things she told him about herself after they started working together.

[21] We found Ms. A's testimony about these incidents entirely credible. It was not only consistent with the evidence about Justice Evans's general habit of touching and standing close, it was supported by the specific testimony of other complainants who stated that Justice Evans's closeness made them feel uncomfortable. We will refer to some of that evidence

later in these reasons.

[22] Ms. A's testimony is also consistent with another incident related by Justice Evans himself. When questioned by his counsel about this question of invasion of personal space, Justice Evans acknowledged that a previous employee, who is not part of these proceedings, had once complained to him about his conduct. He related that this employee had told him that, because of certain events that happened in her childhood, she did not feel comfortable with him being close to her. He stated that he had felt embarrassed when he received her complaint and that he had thereafter respected her wishes. This incident bears close resemblance to Ms. A's testimony.

[23] As stated earlier, it is not acceptable that an employee in the position of Ms. A be forced to confront the person in authority in order to have her private space respected. The employee should be entitled to work in an environment that is free from such unwarranted invasions.

[24] Ms. A testified as to a further incident that shows that Justice Evans did not abide by her express wish that he respect her private space. Ms. A related an incident that occurred in Justice Evans's chambers when, during the course of a conversation, he touched her in the pelvic area. She demonstrated the part of her body where she was touched. It appeared to be in the area of the abdomen on the left side just below the hip bone. Although the versions differ somewhat on the contents of the conversation, it seems clear that somehow they got to discussing work-related difficulties that Ms. A was experiencing with a gentleman. Ms. A testified that during this conversation Justice Evans got up from his desk, came around in front of the desk where she was standing with her arms crossed, and said to her something about "you could grab him here". It was then that he reached out and touched her in the area described. She took it as a suggestion that she should hit the gentleman in the penis area. She was shocked and did not know what to say. She stepped back without saying anything and the conversation ended shortly thereafter. Following this incident she avoided being alone with Justice Evans. Indeed, she told her supervisor that she wasn't going to go into his chambers alone anymore. However, if he called

her into his chambers, she went.

[25] Justice Evans testified that he was alone in chambers with Ms. A over the lunch hour one day when she came to discuss with him a work-related problem she was having with a particular gentleman. She was visibly upset during the conversation. He testified that she is a nervous person and it looked like she was about to cry. She told him that she was afraid of this man and he advised her to go to the police. He told her to tell her husband because he believed that she was married to a police officer. He also told her to tell co-workers so that they could watch the parking lot for her if she went to her car late at night. He then said to her “if worst comes to worst, [...] get him in a public area like on the main street of Collingwood or the parking lot of the grocery store, and just scream at him at the top of your lungs and tell him to stay the [hell] away from you.” During this conversation he was seated at his desk but at this point in the conversation he got up and walked over to where Ms. A was standing. According to his evidence, Justice Evans then advised Ms. A as follows:

And I said, “And if he comes near you, you’re going to have to hit him,” and I brought my hand up, and I struck the outside of her leg. She said to me, “Well, then I’ll get charged with assault.” I said, “No, you won’t.” And I said, “You’ve got to make sure that you do something, otherwise no one is going to know about this.”

He further testified that he did not intend to strike her on the leg during this exchange, that it was an accident and that she did not appear to react to it at the time.

[26] Even on the basis of Justice Evans’s account of the circumstances leading to the physical contact in question, we see no justification for his demonstrative acts that, given the proximity to Ms. A, inevitably led to this invasion of her private space. Ms. A was quite perturbed by this incident and talked about it to some of her friends, including a police officer and a judge. She testified that when she spoke to the latter two, she downplayed the incident by stating that she was touched on the leg because she did not want to place them in a position where they would have to act upon it. She didn’t want to

lose control of the situation and was afraid of coming forward. One of the friends to whom Ms. A spoke about these incidents was Ms. B, a complainant in this inquiry.

[27] When viewed reasonably and objectively, it would not be unreasonable for Ms. A to have concluded that a sexual connotation was intended by the physical contacts. In fact, Justice Evans testified that he had been told about Ms. A in effect warning other employees about him standing too close and he stated that he was very upset at the fact that there would be some sexual innuendo about this conduct. Indeed, that is the real risk of this kind of conduct. It makes it all the more unacceptable.

[28] Ms. A testified about a further incident, when Justice Evans phoned her at home around 11:00 p.m., which lends credence to her level of discomfort about Justice Evans’s conduct. Again the versions differ somewhat as to the reason for the call and the exact words spoken, but nothing turns on these variances in the evidence. It seems clear, on either account, that the reason for the call was work related. Ms. A was asleep and awakened by the call. During the course of the conversation, Justice Evans said – according to her: “now that you’re awake, you can have sex with your partner” or – according to him: “sorry I woke you up, I guess your husband won’t be sorry.” Whatever words were spoken, Justice Evans concedes that there was a sexual connotation and that it was improper.

[29] Justice Evans did not conduct himself appropriately in his interactions with Ms. A.

Ms. B

[30] Ms. B met Justice Evans in the late 1970’s when she worked with him for two summers. She next saw him briefly on one occasion in 1995 or 1996. On September 5, 2000, she attended the swearing-in ceremony of the Barrie Chief of Police with her husband. Following the ceremony, she attended a reception with some 70 to 100 other people. She noticed Justice Evans at the reception. Ms. B testified that she felt uncomfortable in greeting Justice Evans because of what she had been told by her friend Ms. A. She stated however that she felt she

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would be protected from inappropriate behaviour because of her age, the setting and her relationship with Justice Evans. At one point during the reception, Justice Evans and Ms. B ended up in the same circle and they greeted each other. Ms. B stated that Justice Evans shook her right hand and embraced her at the same time with his left arm; as they came together, Ms. B felt the back of his hand in her pubic area. She stated that she moved back thinking that she'd "been done."

[31] During the course of her testimony, Ms. B demonstrated how the greeting took place. Justice Evans gave very similar testimony about the incident. He remembered the encounter and the manner in which he had greeted Ms. B, however, he testified that he did not know that his hand had come into contact with Ms. B as she described. Ms. B, quite fairly, could not rule out the possibility that the touch was accidental. However, she did not believe that it was accidental because she would have expected Justice Evans to apologize or look embarrassed, and he didn't. In response, Justice Evans stated that he would not have cause to apologize since he was unaware of the touching.

[32] We do not doubt Ms. B's sincerity, or her honest belief that the touch was intentional. However, given the manner in which the greeting took place, we accept that any touching of her pubic area could have been accidental.

[33] We find it important to note, however, that this incident exemplifies the inherent risk and potential damage that can be caused by Justice Evans's habit of coming in close physical contact when he communicates with people. Ms. B was quite troubled by this incident. She testified that she felt shocked by the incident and told her husband about it when they left the reception. She also told her supervisor within one week of the incident. She chose not to complain further, however, until much later when the news of Justice Evans's acquittal at a criminal trial in respect of a similar touching came to her attention. She then felt that she had an obligation to come forward, albeit reluctantly. This whole incident caused her a lot of distress that could easily have been avoided by a more careful comportment.

Ms. C

[34] We will deal next with the testimony of Ms. C. The incident involving Ms. C formed the subject matter of a criminal charge laid against Justice Evans. Justice Evans was acquitted at his criminal trial. In essence, the trial judge was not satisfied beyond a reasonable doubt that there had been an intentional assault, and more particularly, an intentional sexual assault.

[35] On December 3, 2002 Justice Evans and Ms. C were chatting in the Justice's chambers while court was in recess. Their respective versions of the exact content of the conversation differ somewhat, but the gist of it is the following. During discussion of Christmas gifts for Justice Evans's wife, Ms. C suggested that her husband's cousin, a pilot, could provide a helicopter ride. Justice Evans inquired what her cousin looked like. When Ms. C indicated that he was young and good-looking, Justice Evans reacted in jest by demonstrating what he would have to do to the pilot. Ms. C testified that Justice Evans placed his hand on her crotch, over her court gown, and said words to the effect, "Well, I'd just hold a gun to him right here, then". In giving his testimony, Justice Evans demonstrated how he pointed his right index in the air and brought his arm down saying words to the effect "we'll just have to shoot him down" thereby coming accidentally in contact with the front of Ms. C's gown. On either version, we interpreted the words and actions to mean that Justice Evans, jokingly of course, would put a gun or shoot the helicopter pilot in the genital area.

[36] There is no doubt that Justice Evans's hand came into contact with Ms. C's genital area. The question remains whether the act was deliberate or accidental. Of course, we are not bound by the findings of the trial judge at the criminal trial. We have also had the benefit of hearing the evidence in a much wider context than that presented at the criminal trial. Nonetheless, given the gravity of the allegation, we are governed by a standard of proof that comes perilously close to the criminal standard of beyond a reasonable doubt.

[37] We are not satisfied beyond a reasonable doubt that Justice Evans intended to sexually assault

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Ms. C by deliberately touching her in the crotch area. However, it is our view, given the proximity of Ms. C to Justice Evans when this demonstrative communication took place, that Justice Evans, at the very least, ought to have known that his hand would likely come in contact with some part of Ms. C's body. We find that he was reckless in his actions and that he acted without proper regard and respect for Ms. C's person. In this respect, this incident bears disturbing similarity with the two previous incidents involving Ms. A and Ms. B.

[38] Justice Evans did not apologize when his hand came into contact with Ms. C. Rather, as Ms. C testified, he patted her on the rear and said "let's go", and they entered the court. We accept her testimony on this point. One other complainant testified to similar pats on the buttocks before entering the courtroom. We will deal with those allegations later in these reasons. Obviously, such conduct is totally unacceptable.

[39] Other incidents involving Ms. C, although not particularized in the Notice of Hearing, provide further context and lend support to our conclusion that Justice Evans improperly invaded Ms. C's private space. Ms. C testified, and we accept, that Justice Evans on one occasion removed the hair from her eyes; on another occasion, he took a jujube from his pocket and put it in her mouth despite her resistance; and in general, she felt that he always stood too close for comfort. Justice Evans agrees that the incidents with the hair and the candy took place, albeit with a different explanation as to the context. Even on Justice Evans's own account of these incidents, we are of the view that his actions were unwarranted and inappropriate.

Ms. D

[40] Ms. D testified about a number of incidents where she felt that Justice Evans touched her inappropriately.

[41] Both Ms. D and Justice Evans gave evidence about a first incident when Ms. D was very upset about the disturbing nature of some evidence she had heard in court and Justice Evans, in the course of trying to comfort her and assist her, attempted to

remove, according to Ms. D, or removed her court gown, according to Justice Evans. Ms. D thought nothing untoward about this incident at the time. It is only later when she thought about it in the light of other incidents that she believed it was improper for Justice Evans to reach out in the back of her gown to untie it and remove it. While it is not entirely clear why Ms. D's gown had to be removed, we accept that she was very upset at the time and that this was done in an attempt to come to her assistance. In all the circumstances, we find it unnecessary to comment further on this incident. The other incidents related by Ms. D were the following.

[42] In or about February of 2001, Ms. D and Justice Evans were working at the Collingwood courthouse. As court was about to open, Ms. D went upstairs to Justice Evans's chambers to get him. While she was waiting for him to finish a phone conversation, she stood in the corridor outside his chambers, with her back towards a wall and briefly lowered her eyes. She heard him hang up the phone and come towards her. He took his hands and intertwined his fingers in hers and backed her to the wall that was approximately one foot away. He put his chest against hers and pinned her to the wall. She recalls him saying something to her but cannot recall what it was. She could not recall exactly how she got away from this position but knew she wiggled out somehow. Justice Evans moved away from her, and then continued on to the courtroom.

[43] Ms. D testified that she felt shocked that Justice Evans would walk up to her and "help himself to me as if I was nothing." At the first morning recess she tucked her arms in her gown to avoid further touching. Justice Evans tried to grab her hands but found her sleeve instead. He asked her what was wrong and she told him "Oh, I'm just cold." She testified that after that incident she always walked around with her hands inside her gown so that he could not reach them. She did not tell anyone in the courtroom about this incident that day because, as the judge, "he has all the power" and she was afraid that she would not be believed.

[44] Two other judges testified that they observed Ms. D walking with her arms underneath her gown. One stated that she walked like that all the time; even

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in his court. The other stated that he had observed that often; in particular, he testified that Ms. D did not like the gowns that zipped down the front but she still walked around with her hands underneath. Ms. D's distinctive walk became a subject of humour among the judges who referred to her as "the Flying Nun".

[45] On August 2, 2001, two court staff and Ms. D, along with Justice Evans, took a government car up to the Collingwood courthouse. Before arriving at the courthouse, the group stopped to pick up coffee. They returned to the car, and Ms. D was standing at the door, alongside Justice Evans, as they waited for the driver to unlock the doors. As she was getting into the car, Justice Evans grabbed her left buttock.

[46] Ms. D expressed her utter disbelief at this event happening in the middle of a public parking lot. However, other than telling her husband, she kept the matter to herself. She vowed to herself, however, that if he touched her again, she would do something about it. Ms. D did not work with Justice Evans for the rest of 2001 after the incident in the parking lot.

[47] However, throughout the months of February, April, June and September of 2002, Ms. D worked on occasion with Justice Evans. She testified that whenever she would open the doors to get to court, she would feel Justice Evans touching her on the arm, she would feel his chest or his stomach against her, making her feel uncomfortable. Often he would have jujubes in his pocket and offer her candy. Only if she was firm and stepped back would he not try to put one in her mouth.

[48] In cross-examination Ms. D confirmed that on one occasion she and Justice Evans had an argument in which they both raised their voices. This argument took place right at the time of the opening of the new Collingwood courthouse in August of 2001. She testified that one of her responsibilities was to see that the protocols at the new courthouse were enforced, including a new security measure designed to restrict the flow of people into the area of the judge's chambers. She had a serious dispute with Justice Evans over the fact that no one was allowed back into his chambers without prior approval. She reported this matter to her supervisor and was not

paired with Justice Evans for some time.

[49] We are satisfied that Ms. D felt a high degree of discomfort, if not dismay, with Justice Evans coming into unnecessary physical contact with her as she carried out her duties. We accept her testimony that sometime in February 2001, Justice Evans came into physical contact with her by touching her hands and standing so close to her that his body came into contact with hers. We also accept her evidence about the occasions she worked with Justice Evans in 2002 when she felt he was always so close to her that she could feel his arm, or parts of his body touching her. This evidence is consistent with the evidence that we heard from just about everyone in this inquiry, and it is credible. Many witnesses stated that they were not perturbed by Justice Evans's closeness and took it simply as being a characteristic of Justice Evans's friendly nature; others felt the need to tell him to back off and did so; but all readily identified this conduct as highly characteristic of Justice Evans. As we stated earlier, we are of the view that this conduct is inappropriate with employees such as Ms. D who is neither in, nor should she be placed in, a position where she has to stand her ground and tell Justice Evans to back off.

[50] We come now to the incident in the parking lot. Justice Evans denies that this occurred. There is no suggestion that there may have been an accidental touching of Ms. D's buttock as she entered the car. Rather, it was suggested that it was not likely that this act could have occurred in the manner described by Ms. D given the distance between Justice Evans and Ms. D as they each opened their respective car door. We do not accept that argument. In our view, there was nothing implausible about the incident as it was described by Ms. D. The issue turns entirely on credibility.

[51] We have carefully considered Ms. D's testimony in its entirety. Throughout, and particularly in cross-examination, she gave her testimony in a very responsive and spontaneous manner. Her testimony, when considered on its own, was entirely credible. It also stacked up against the other evidence. For example, it is noteworthy that this incident would have happened right before, if not on the very morning of, the opening of the new courthouse in Collingwood.

Justice Evans and Ms. D gave consistent accounts of the heated arguments between the two that occurred later in the day. Justice Evans agreed that this appeared uncharacteristic of Ms. D. It also accords with Justice Evans's recollection that Ms. D did not work with him for quite awhile after that day. Ms. D's conduct is consistent with this incident having happened as she described. Her attitude towards Justice Evans changed dramatically after that day.

[52] In addition, Ms. D's testimony that she was improperly touched on the buttock does not stand alone. We have already reviewed Ms. C's evidence that Justice Evans patted her on the buttock as they entered the courtroom. We will review the evidence of Ms. F who recalls two occasions when the same conduct occurred. There is also the evidence of Ms. E, which bears even greater similarity to this incident. The similarity of these allegations defies the suggestion that all these witnesses are mistaken or lying about these incidents. We are satisfied that Justice Evans touched Ms. D on the buttock as she entered the car in the McDonald's parking lot.

Ms. E

[53] Ms. E testified as to an incident that happened at the Simcoe County Criminal Lawyers' Association Christmas party in December 2000 in the offices of a group of Barrie lawyers. She was talking with some people; her back was to a corner of the room; Justice Evans was standing beside her; then he reached over and touched her buttocks. She was a little bit shocked, but did not say anything and continued talking with the group.

[54] Ms. E testified that she didn't think a whole lot about it at the time. She agreed that the touch was momentary. However, she would not describe it as just fleeting. She was definite that she felt a touch. She was cross-examined on her statement to the police in which she told them that she was not sure whether or not the touch was intentional and testified that, upon further reflection, she thinks that it was intentional. When asked to describe the pressure of the touch, she described it "like a grab. It wasn't hard, it didn't leave marks or anything, but well, like you cop a feel, I guess is the term." She agreed in cross-examination that she told the police in her

statement that she was "not sure if it was a grab or not". She explained that she used the word "grab" at that time as meaning "like really grab somebody hard" but when testifying used the words "grab, touch or a feel" to describe the act while recognizing that those words can have different meanings.

[55] Ms. E did not mention the incident until sometime after April 2001 when she started going out with a man to whom she is now married. She mentioned the incident to him. Her husband testified and confirmed that Ms. E had told him that Justice Evans had placed his hand on her buttock at a Christmas party. He stated that she did not seem unduly alarmed by the incident. He was not sure whether she told him or whether he was simply left with the impression that the touch was fairly momentary, nothing worth complaining about, and that she was not sure whether it was sexual in nature or whether Justice Evans had just been careless and overly tactile.

[56] Justice Evans remembers attending the Christmas party in question but does not remember talking to or even seeing Ms. E there. We find it entirely credible that he may forget whom he may have seen or spoken to at this party. However, in our view, this does not detract from the credibility of Ms. E's testimony. We are persuaded that this is yet another incident where Justice Evans's overly friendly and tactile approach crossed the line and became inappropriate.

Ms. F

[57] Ms. F worked at the Barrie courthouse. Ms. F testified that sometime in February 2001, Justice Evans phoned her at home one evening at approximately 7:00 p.m. She had been napping at the time. Justice Evans told her that he needed help with some photocopying and told her to join him at the courthouse. She stated that she did not feel like going back out as it was winter. However, she felt that she owed him a favour because he had been very helpful to her; listening; helping; generally being a friend.

[58] Justice Evans was in his chambers and she went in. Justice Evans shut the door to his chambers. He sat on the couch and she sat on the couch as well.

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Justice Evans talked about a variety of things; he began to ask her about what her ideal dream date would be like, her ideal man; what would make her happy. There was more conversation about matters pertaining to her personal life. There was no discussion about photocopying. Ms. F testified that she doesn't "know how it happened" but they ended up dancing, although there was no music. While they were dancing, he was still asking her the same questions about her personal life. She looked at the clock and decided that if she was not going to photocopy then she was going to go home and workout. At the door, just before she left, he kissed her. Although she did not feel threatened, she felt uncomfortable. However, she did not react as she does not like confrontation. A few days later, Justice Evans phoned her and though she couldn't recall his exact words, she took it to be an apology. At the end of the conversation, he said "But you didn't fight me." She took that to mean that it was all right since she didn't fight him off.

[59] Ms. F also testified that, a few times, Justice Evans would give her "a slap on the ass" before going to court. She was annoyed by this. However, she did not see this as sexual, but more "a football type of thing" which we take to mean an action intended to instill a sense of team play. Justice Evans also did not deny that he may have made contact with Ms. F on the rear as she described. He testified that they had a good relationship and that, as with other court clerks, there would be a lot of patting on the back "or even when going into court, you would hit somebody, and when I say hit, I came in contact with them with the back of my hand". He agreed that it is possible that he came into contact with Ms. F's buttocks when he tapped her on her gown, but denied that he would do so intentionally. There is no question that this conduct, even in a context of "team play" is highly inappropriate.

[60] Ms. F's situation was canvassed more fully in cross-examination. Ms. F testified that she was relatively new to the job at the beginning of 2001 and that she found it stressful. She stated that she had personal problems at that period of time and that she was often in tears. She agreed that she discussed some of her personal problems with Justice Evans.

Justice Evans made arrangements for her to seek professional assistance. She vaguely recalled a conversation about dogs and about wanting a dog; she recalled Justice Evans giving her a stuffed dog and agreed that she was touched by this gesture. It was suggested to her that, because she was touched by this gift, she kissed Justice Evans and the kiss became more than friendly, and she had apologized. She testified that she did not recall that and that, if it had happened, she would recall it.

[61] Justice Evans testified that he first met Ms. F in the fall of 2000. She sought his advice on some personal matters. During their first such discussion, she told him that she was upset that she was making mistakes on the job. He asked her if something was wrong and she told him that she was having difficulty sleeping at night and was using sleeping pills. During the day she was groggy and making mistakes. She was afraid that she was going to lose her job. During this discussion, she also told him about a personal problem and he recommended a psychologist to her. During their second conversation he told her that he had made contact with the physician on her behalf and she thanked him. However, she was concerned about paying for the sessions on her wages and he recommended a second job for her at the local flea market.

[62] During a third conversation Justice Evans testified that Ms. F told him that she was having difficulty in relationships with men. He testified that she initiated the discussion and told him that she always ended up with the wrong kind of guy. He asked her what kind of man she wanted and they discussed the matter further. Justice Evans agreed that they did have a conversation about Ms. F's "ideal dream man" and what would make her happy, but he testified that it happened at a different time and in a different manner than that testified to by Ms. F. He denied calling her at home in February of 2001 to come to the office to assist with photocopying. Rather he testified that this third conversation occurred in his chambers one day after court. He agreed that during this third conversation he gave her a little stuffed dog so that she would have a dog to talk to. The conversation ended at around 6:00 p.m. and as she was walking out the door she started

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to cry and laugh a little and she gave him a hug and started to leave his chambers. He further testified that she came back in and kissed him on the mouth, and that he kissed her back, for about five seconds. According to Justice Evans they both jumped away and then apologized to each other. Though denying that he called her at home in February of 2001, Justice Evans did testify that it was possible that he might have called her at home to “check up on her” on other occasions, though he does not recall having done so.

[63] There is considerable consistency between Ms. F’s and Justice Evans’s respective versions. It is clear that their relationship was a good one. Justice Evans expressly said so in his testimony. Ms. F was going through a difficult time in her life, she discussed many of her personal problems with Justice Evans and he was very helpful to her. This is entirely consistent with the character evidence that we heard.

[64] However, there are important inconsistencies between the two versions. On Justice Evans’s account, apart from the slaps in the rear, the incident in his chambers was simply one where both, first Ms. F and then he, had been overcome by the emotion of the moment and they kissed. On the other hand, on Ms. F’s account, Justice Evans abused his position of authority in bringing Ms. F to his chambers for the purpose of making romantic advances to her. The issue turns on credibility.

[65] Ms. F appeared as a very mild and gentle person. She felt no animosity towards Justice Evans. On the contrary, she was grateful for his assistance and friendship. She gave her testimony without exaggeration, and fairly. For example, when Justice Evans’s version of the kissing incident was put to her, she simply answered to every suggestion that she did not recall that happening. It is in re-examination when asked if she would recall it if it happened that way, that she testified that she would have remembered if it had happened that way.

[66] Justice Evans’s account of his relationship with Ms. F did not have the same ring of truth. The portrayal that he put forth of three distinct, mostly business-like meetings with Ms. F did not stack up with the highly personal content of the conversations that she had with him. In fact, his account seemed

incongruous with the overwhelming evidence about his friendly, caring, compassionate, helpful nature. It also doesn’t fit well with him having called her a couple of times at home to see how she was.

[67] Ms. F’s testimony about the romantic advances made by Justice Evans is also supported by similar evidence from the next complainant’s evidence that we will review. When the evidence is considered as a whole, we are persuaded that the incident in Justice Evans’s chambers happened as Ms. F described it.

Ms. G

[68] Ms. G first described an incident in 1999 when Justice Evans had assisted her in the preparation of an affidavit that she required to obtain student loans as she was planning on going back to university in Western Canada. One night, he phoned her at home at 11:30 p.m., indicating that he had signed the affidavit. She thanked him and suggested he put it in the inter-departmental mailbox at work but he suggested he would drop it at her home that night and she said “O.K.” She was surprised that he would have her phone number. She may have had to give him the address over the phone. She doesn’t recall. She lived in a rental unit of a house approximately three minutes from the courthouse. Another court staff member owned the house and lived above. Justice Evans stayed about 15 minutes and when he left, he told her not to say anything to that court staff member because it would not look good. In cross-examination, the gist of it all was that Justice Evans needed to bring this affidavit to her in person so that she could sign it in his presence and he could commission it. The witness indicated that that was not true; that was not how it happened. Justice Evans also provided a reference letter for her, then she went off to school until she came back to the same job at the courthouse in Barrie in September 2001.

[69] Ms. G testified that she had personal conversations with Justice Evans mostly related to her career choices. He would assist in giving her advice. In the Fall of 2001, she developed a relationship with a lawyer, Mr. M. Ms. G testified that Justice Evans phoned her at home one evening after dinner, or close to dinnertime. He told her, “I hear that you like

a certain lawyer” and she said, “Yes.” He said, “Do you dare me to tell Mr. M that you like him?” She said, “Sure.” Justice Evans asked, “What will you give me if I do? Would you sleep with me? Would you ever sleep with a fat man with a big dick?” He indicated he was having marital difficulties and asked her if she would have an affair with him. She told him she did not engage in sex without involvement. She was shocked and felt that if she spoke up it would mean trouble with her job. She had no security of employment at that time. She told her sister about this incident, also Mr. M, though not the details. Ms. G was not cross-examined on this incident.

[70] Ms. G then described that she had been away for 5 weeks around Christmas of 2001 and she had sent Christmas cards to different people, including Justice Evans. In the card, she wrote a note thanking him for his advice about potential employment. Upon her return, when she asked him, he said he had not received the card. They were in his chambers at the time. Justice Evans then gave her a holiday kiss and a hug. However, instead of getting out of the embrace, he said, “That’s not what I want.” He kissed her, put his tongue in her mouth. She said, “People could walk in”. He then closed his door, did it again and asked her to repeat: “Say ‘Kerry, I like kissing you.’” She started by saying “Kerry” and then she couldn’t go on, she just said, “I don’t talk like that at the best of times, so I can’t say it” and “I’ve got to get ready for court.” She thought of making a formal complaint, but was afraid of losing her job. At the end of that day in the parking lot, he motioned for her to come with her car and she rolled down her window and he said, “Thanks. Thanks for today.” She took that to mean either thanks for the kiss or for not saying anything. Again, there was no cross-examination about this incident.

[71] Ms. G then described an incident that would have happened at Shirley’s Bar where, at the end of it all, Justice Evans would have gone up to where she was seated, put his hands on her thighs and kissed her. The gist of the cross-examination on that incident suggested that Justice Evans’s friend, Mr. Regan, would have been present throughout the evening. The witness agreed that Mr. Regan was with Justice Evans, but not at that particular point in time.

She agreed that she was upset that night. A girlfriend of Mr. M’s had shown up and she was upset. In an earlier statement to the police, Ms. G had said that Justice Evans had kissed her on the cheek. She maintained in her testimony that it was a kiss on the lips and that she had made a mistake in her police statement. She stated the police were more interested in the event at the courthouse. Ms. G has commenced a civil action against Justice Evans jointly with Ms. D.

[72] Justice Evans denied the incidents with Ms. G. He gave detailed testimony about the circumstances surrounding the delivery of the affidavit to her home. He testified that it occurred in the winter, not in the summer. He came into the office after supper on a Thursday night and was getting things ready for court in Collingwood the next day. In the pile of materials in his office he found the affidavit that his secretary had typed at his request for Ms. G’s student loan application. Ms. G had left him a note asking him to notify her when the affidavit was ready, but she hadn’t told him that it was urgent at that point. Nonetheless, Justice Evans called her at home shortly after 11:00 p.m. and told her the affidavit was ready and that she should come to court the next day so that she could sign it. She told him that she had been ill in court that day and that she was not scheduled to go to court the next day. He offered to leave it at the office so that she could come in on Monday to sign it but she told him it had to go out Friday, the following day, or she would not get her loan. It was at this point that he offered to drive it to her home. When he arrived, she was standing outside the doorway to the house in a t-shirt and track pants and waved to him. He told her to get in the house so she didn’t “freeze to death”. He spent approximately 10 minutes in the house with her while commissioning the affidavit. At the conclusion of their discussion Ms. G asked Justice Evans if he wanted to say “Hi” to the court staff member that lived upstairs and he told her that he did not and that, “I don’t want you to even tell her I came here because then there will be talk all over the courthouse.” He subsequently wrote two letters of reference for Ms. G.

[73] Justice Evans acknowledged that he learned of Ms. G’s interest in Mr. M. He stated that he was shocked by it as he had not heard of Mr. M’s break-

up with his wife. Justice Evans testified that Ms. G announced to him “I broke up his marriage.” This suggestion was never put to Ms. G in cross-examination.

[74] Justice Evans also gave very detailed evidence about the evening at Shirley’s Bar. He agreed that he saw Ms. G one night at Shirley’s Bar. However, he was with his friend Mr. Regan the entire time and the restaurant was filled with Crown Attorneys and other people that he knew. He denied having come into physical contact with Ms. G as she described.

[75] In cross-examination, Justice Evans related two incidents that occurred when Ms. G was upset with him. He testified that he was leaving a Christmas party in 2001 when Ms. G approached him and asked him to stay because her former boyfriend was still there with his new girlfriend. He detached her from his arm and told her that he was going home. He further testified that in November of 2002 Ms. G chastised him for not having completed a letter of reference for her and he told her that she was self-centered and that he didn’t do reference letters on demand and that he would not be writing a letter for her then or ever. Ms. G was not cross-examined about either of these events.

[76] We do not find it necessary to determine what precise circumstances led to the delivery of the affidavit to Ms. G’s home late in the evening. Other than providing additional context to the relationship between Justice Evans and Ms. G, nothing turns on that incident. We are also not persuaded that there was improper physical contact in Shirley’s Bar. There may well have been some friendly contact sometime during the evening, but again, nothing turns on the events of that evening.

[77] The question for determination is whether Justice Evans made sexual advances to Ms. G as she described. Again the issue turns on credibility.

[78] Ms. G gave reasonable testimony. She was not shaken in cross-examination. Indeed, as stated earlier, she was not cross-examined about most of her testimony except in respect of some peripheral incidents.

[79] Justice Evans’s testimony did not have the same ring of truth. Parts of his testimony seemed incredible. For example, he related a number of instances where Ms. G, rather than he, would have

been the one giving him instructions. On his evidence he made a number of suggestions to Ms. G that would have avoided him having to attend at her home with the affidavit but because she rejected each of them he ended up dropping it off that very night, after 11:00 p.m., a few minutes from the courthouse and in the opposite direction to his own home. Justice Evans’ vivid recollection of the circumstances surrounding the delivery of the affidavit in 1999 and the evening in Shirley’s Bar in 2001 as evidenced by his very detailed account of those incidents do not seem commensurate with the relative unimportance of the events. His description of his attitude and conduct with Ms. G, as it was in respect of Ms. F, seemed to be at odds with the friendly, approachable and caring person as he was described by everyone.

[80] In January 2002 Justice Evans was experiencing some medical issues. On January 7th he was diagnosed with non-Hodgkin’s lymphoma. On January 10th he talked to Justice Palmer about his diagnosis. Justice Evans was only at the Barrie courthouse on certain days in January as he was either sitting in the satellite courts in Bradford or Parry Sound or attending medical appointments. On January 15th he had a biopsy. He testified that his medical concerns were impacting on his emotional state. We don’t doubt his evidence in that regard. But it does not detract from the credibility of Ms. G’s testimony.

[81] On the totality of the evidence, we are satisfied that the phone call and the kiss in the chambers happened as described by Ms. G.

Ms. H

[82] Initially Ms. H alleged that five separate incidents of sexual contact occurred with Justice Evans in his chambers, two of which involved oral sex. Sometime before the hearing, Ms. H told presenting counsel that she was no longer certain whether the two incidents of oral sex were only one incident. Her best recollection at the hearing was that there was only one incident involving oral sex. Her testimony was essentially as follows.

[83] The witness first described how Justice Evans helped her in various respects. She described

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how he had helped her dictate a letter relating to a court case in which she had been involved. He also helped her in July 2002 on another occasion when certain events left her without any money. At that time, Justice Evans gave her a cheque for \$150 so that she could buy groceries. She testified that she did not cash the cheque and arranged for an overdraft at the bank. She also discussed how there would be frequent discussions about her personal problems. She then described all incidents of sexual contact as happening during the course of the month of August 2002 and, possibly during the first week of September 2002. Her testimony can be summarized as follows.

[84] Ms. H testified that, sometime in August, 2002, while she was in Justice Evans's chambers for work-related reasons, she mentioned that she was thirsty. Justice Evans told her to get a drink out of the fridge located in the closet. The closet consists in fact of a small hallway leading into Justice Evans's private washroom. Ms. H bent over to remove a drink from the fridge; when she attempted to stand up, Justice Evans was in the closet with her, held her by the shoulder, touched her left breast, and possibly kissed her. Ms. H said she was shocked. Justice Evans asked her if she was o.k.; she did not comment and left his office.

[85] On a separate occasion, Ms. H was in Justice Evans's chambers, again for work-related reasons. At one point, she was seated in his chair; Justice Evans began massaging her shoulders and then down her body. He also took her hand and rubbed it up and down the front of his trouser pants. According to Ms. H, Justice Evans then took her underwear down and played with her vagina. Justice Evans talked throughout the incident, telling Ms. H she was enjoying it.

[86] Ms. H described how, on another occasion, over a lunch hour, Justice Evans approached her as she was leaving his chambers and manoeuvred her backwards through his change room and into his private washroom. She was wearing a skirt; Justice Evans took down her underwear and performed oral sex on her. She testified that she kept telling him that she would lose her job. After she had an orgasm, he told her: "I've pleased you, now it's your turn." He leaned against the bathroom door and she started to

perform oral sex on him. They were interrupted when someone knocked at the chambers door.

[87] Ms. H also testified that at some point, Justice Evans suggested to her that she tell her manager she was sick and leave for the day so that they could meet at a hotel. He also offered her money to buy lingerie to wear for him.

[88] On a final occasion again in August or possibly September, 2002, Ms. H was in Justice Evans's chambers for work-related reasons when he came up behind her and began grabbing her breasts through her clothes. A clerk knocked on the door and walked in, and Justice Evans stopped.

[89] Ms. H testified that, in addition to those specific incidents, there was a lot of kissing during the course of the month of August. When asked how it all came to an end, she stated that she simply started to avoid him. For example, whenever he needed anything, she insisted that the door be open; or she would let someone know that she was going into his chambers.

[90] Ms. H did not tell anyone about these incidents until Justice Evans was suspended in December 2002 as a result of the complaint brought by Ms. C. She became aware of an e-mail message sent by one of the judges to the other judges, essentially expressing his view that the process was not fair and that other judges should consider not working with Ms. C. Ms. H said she was shocked that the judges would treat Ms. C in this way. She then raised the issue with Justice Evans, asking him, "What about me?" He said she should do what she thought was best. After Justice Evans was suspended, she revealed to Ms. G that something had happened to her as well, but provided no details. Ms. G gave Ms. H's number to the police and the police contacted her. She indicated that the O.P.P. and Mr. Hunt are the only people to whom she has given details about these incidents.

[91] Justice Evans denies that there were any incidents of the kind with Ms. H. He denies ever engaging in oral sex with Ms. H. He denies ever being in his washroom with her or lowering his pants in front of her. The only physical contact he says occurred between them was on the night of a mock trial that he organized. She thanked him for giving

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her recognition and then hugged him and he briefly hugged her back. He testified that it was not until the time of disclosure in relation to these complaints that he learned about some of her other personal history.

[92] He testified that on occasion he would ask her to assist him in his chambers with work-related matters. However, he denied any of the physical or sexual conduct that she alleges took place, including massaging her breasts, removing her underwear or suggesting they go to a hotel. He denied giving Ms. H a cheque. He agrees, however, that he did give her \$80.00 cash to assist her on another occasion.

[93] The allegations made by Ms. H are very serious. The overall tenor of her testimony is not that Justice Evans engaged in consensual sexual acts with her. Rather, on her account, he would have committed serious sexual assaults on her person. We have carefully assessed the evidence about these allegations having regard to the high standard of proof that must be met. In our view, that onus has not been met.

[94] Several features about Ms. H's testimony raise concerns about her overall credibility. In many respects, there was a certain inconsistency between the manner in which she often portrayed herself as a victim during the course of her testimony and her conduct, as she described it and as she exhibited at the hearing. Details about these matters could serve to identify Ms. H; hence we will not expand upon that aspect of her testimony.

[95] There was also some inconsistency between the incidents as she described and other conduct by Justice Evans. For example, she alleged that in August Justice Evans arranged to have her speak to a counsellor associated with the courthouse with respect to her personal problems. If indeed she was the victim of sexual abuse at the hands of Justice Evans, this would have formed part of the personal stress she was under and it would seem astounding that he would send her for counselling to someone associated with the Barrie courthouse.

[96] Ms. H was under extreme stress during the relevant period of time for various personal reasons that, again in the interest of her privacy, we do not want to give specific details. However, we are left with some concern about her ability to recollect the events of August 2002 with accuracy.

[97] Ms. H did not seem careful in presenting her testimony and several times, particularly when confronted in cross-examination, she gave exaggerated responses. For example, she disagreed with the suggestion put to her in cross-examination that there were frequently people opening Justice Evans's door without knocking first. She testified that his office was "practically sealed most of the time" because he had meetings in there and the "door was closed most of the time." This evidence stands in contrast to the evidence of the numerous other witnesses that testified to Justice Evans open door policy. As well, Ms. H testified that on the occasion where she was retrieving a drink from his fridge, Justice Evans grabbed her shoulder and her right breast. However, in cross-examination it was put to her that she told the police that he touched her shoulders and her arms and "probably my chest." She explained that she was too embarrassed to say the word "breast" at that time but that her ability to do so had improved over time. She was cross-examined on why she had told the police about two episodes of oral sex when she was now testifying they occurred at the same time and she sought to explain the apparent contradiction by suggesting that the police misunderstood her, as she had meant "one for him, one for me". However, in her interview with Mr. Hunt she explains the contradiction by telling him that she is still confused as to whether there was one incident of oral sex or two and that she is not sure if they were at the same time or on two separate occasions. As well, she testified that Justice Evans did not ejaculate during this episode of oral sex but told the police that she was not sure whether he had or not. She also exhibited obvious hostility towards Justice Evans during the course of her testimony.

[98] In many respects, it was improbable that all the incidents happened in the time frame that she described. She testified that they occurred in August and into September of 2002. However, a review of Justice Evans's schedule that month shows that he was only in attendance at the Barrie courthouse on the 1st, 2nd, 6th, 7th and 8th of August. On the days that he did attend the courthouse he made a point of leaving as soon as possible to join his wife and daughter at the side of his father-in-law who was then sick in the hospital. The other days of the month he was either sitting in one of the satellite

courts, in Bradford, Collingwood or Parry Sound, or on a two week scheduled vacation or at the funeral of his father-in-law. In September of 2002, Monday the 2nd was the Labour Day weekend. On the 3rd, 4th and 5th of September Justice Evans was sitting in Barrie.

[99] It was also unlikely that these incidents would have occurred during the regular work day. Many of the other judges would routinely enter Justice Evans's chambers to use the fridge or the microwave. For example, Justice Palmer would bring his lunch and attend in his chambers three out of five days a week. In addition to the judges, other court staff were constantly entering Justice Evans's chambers. Most of the clerks knocked before entering but the judges often did not. Justice Evans never locked the door.

[100] There were a number of inconsistencies between her testimony and her previous statements, the most significant of which relates to the number of incidents of oral sex. At the very least, this inconsistency seriously impacts on the accuracy of her testimony.

[101] Much was made at the hearing about the fact that Ms. H had failed to note anything unusual about Justice Evans's genitals during the incident of oral sex. Justice Evans testified that he shaves his groin area and, at the time of the alleged oral sex had a red rash on his leg that would have been noticeable to Ms. H. In the overall assessment of Ms. H's evidence, we did not consider this evidence particularly helpful. Hence we do not find it necessary to comment on it further.

[102] In the end result, we are not satisfied that there was sexual misconduct in respect of Ms. H as alleged. We dismiss that complaint.

Conclusion

[103] We find that there has been misconduct as described in these reasons. Counsel will be contacted to fix a date for the continuation of this hearing on the question of appropriate sanction.

DATED at the City of Toronto, in the
Province of Ontario, this 23rd day of
September, 2004.

The Honourable Louise Charron
The Honourable J. David Wake
Jocelyne Côté-O'Hara
Henry G. Wetelainen

APPENDIX “A” TO DECISION – PARTICULARS OF THE COMPLAINT

The particulars of the complaint regarding the conduct of Justice Kerry P. Evans are set out below:

MS. G

1. Ms. G worked with Justice Evans at the Barrie courthouse. One night during the summer of 1999, Justice Evans called her at her apartment at approximately 11:30 pm. He insisted that, on his way home from the courthouse, he come by and drop off a reference letter, that she had requested. Ms. G thought it odd that he insisted on coming by, but provided her address. Justice Evans arrived and stayed for approximately 15 minutes. He was very concerned that Ms. G's landlord, who also worked at the Barrie courthouse, not be woken up or otherwise know of his visit.
2. In November 2001, upon discovering that Ms. G had a romantic interest in a particular lawyer, Justice Evans phoned her at home and challenged her to dare him to tell the lawyer about her interest. Justice Evans asked Ms. G what he would get from her in return if he followed through on the dare. He then asked her, “Would you sleep with me?” Ms. G tried to dismiss the comment as a joke. Justice Evans then went on to disclose that he was having marital problems and asked if she would consider having an affair with him; he said words to the effect, “Would you ever consider sleeping with a fat guy with a big dick?” Ms. G told him she couldn't sleep with him, and the conversation ended.
3. In December 2001, Ms. G was in a Barrie bar with a group of her friends. Justice Evans was also there, and upon noticing her with her friends, he approached her. She was sitting on a bar stool and he put his hands on her upper thighs, leaned in and gave her a kiss on the lips.
4. In January 2002, Ms. G having sent Justice Evans a Christmas card inquired if he had received it when she returned to work after the Christmas holidays. He said no, and led her into his chambers, whereupon he gave her a kiss. Ms. G said “No”, and then he kissed her on the lips and put his tongue in her mouth. Ms. G pulled away from

him, but he placed himself between her and the door as she tried to leave. He kissed her again and said, “Say, ‘Kerry, I like kissing you’.” Ms. G hesitated, said “Kerry...” and then said, “I can't do this. I don't talk like this at the best of times so I can't say that.” She then said, “I've got to go.” and left his chambers. Later that day, when he was leaving the courthouse parking lot, he waved her over and said, “Thanks, kiddo.”

MS. D

5. Ms. D worked with Justice Evans at the Barrie courthouse. On June 19, 2000, she had been in court listening to a pretrial, and was upset by some of the evidence and had to leave the courtroom. As she was standing in the hallway, regaining her composure, Justice Evans noticed her and took her into his chambers to get a tissue. Once there, he began to tug at her gown, trying to remove it. She resisted, telling him, “No”. He continued to try and remove her gown, and she told him that it was tied in the back and wouldn't come off. Ms. D's supervisor walked in at that moment, and he stopped.
6. In or about February or March of 2001, Ms. D and Justice Evans were working at the Collingwood courthouse. As court was about to open, Ms. D went upstairs to Justice Evans' chambers to get him. While she was waiting for him to finish a phone conversation, she stood in the corridor outside his chambers, with her back towards a wall and briefly lowered her eyes. She heard him hang up the phone and come toward her. He took his hands and intertwined his fingers in hers, put his chest against hers and pinned her to the wall. She recalls him saying something to her, but cannot recall what it was. He moved away from her, and then continued on to the courtroom.
7. In August 2001, two court staff and Ms. D, along with Justice Evans, took a government car up to the Collingwood courthouse. Before arriving at the courthouse, the group stopped to pick up coffee. They returned to the car, and Ms. D was standing at the door, alongside Justice Evans, as

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APPENDIX “A” TO DECISION – PARTICULARS OF THE COMPLAINT

they waited for the driver to unlock the doors. As she was getting into the car, Justice Evans grabbed her left buttock.

8. Throughout the months of February, April, June and September of 2002, Ms. D was working with Justice Evans. Whenever Ms. D would open the doors to get to court, she would feel Justice Evans' arm against her, or his chest or his stomach pressing against her, making her feel uncomfortable. On at least two occasions during this time, he asked her if she wanted a candy. When she refused, he took advantage of her arms being full of files to try and put the candy in her mouth. Ms. D backed away, removed his hand, and refused the candy.

MS. E

9. Ms. E worked with Justice Evans at the Barrie courthouse. She was standing with a group of friends at the Criminal Lawyers' Association Christmas party in December 2000. The event was held at the offices of a group of Barrie lawyers. She was talking with her friends, and her back was to a corner; Justice Evans was standing beside her. He reached over and touched her buttocks. She was surprised, but continued talking with the group. She believes that she moved away from Justice Evans at that point.

MS. F

10. Ms. F worked with Justice Evans at the Barrie courthouse. In February 2001, Justice Evans phoned Ms. F at home one evening at approximately 7:00 pm, and told her to join him at the court to help photocopy. Justice Evans was in his chambers and she went in. They sat on his couch and he began to ask her about what her ideal dream date would be like, her ideal man, what would make her happy. She asked where the photocopying was, and seeing no work to be done, she said she was leaving. When she stood up to leave, Justice Evans grabbed her and began dancing with her. She tried to leave and when she placed her hand on the doorknob, he leaned

in and kissed her. She thinks he may have done it a second time, and recalls him saying, “C'mon, kiss me, kiss me.” She said she had to go, and left. Several days later, Justice Evans called Ms. F at home and apologized, but commented to her that, in any event, she had not fought him off.

MS. H

11. Ms. H worked with Justice Evans at the Barrie courthouse. In or about August 2002, Justice Evans called Ms. H into his chambers, and while there, asked her to get a drink out of the fridge located in the closet. She bent over to remove a drink from the fridge; when she attempted to stand up, Justice Evans was in front of her and grabbed her. He began caressing her shoulders, chest and arms and stroking her breasts, saying, “I know you like this”. Ms. H believes he kissed her. She told him that she had to get back to work.
12. On a separate occasion in or about August 2002, Justice Evans called Ms. H into his chambers and when she sat down, Justice Evans began massaging her shoulders and touching her breasts. Ms. H recalls him constantly talking during the incident, asking, “Do you like this?” repeatedly. Justice Evans then took Ms. H's underwear down and touched her vagina. Justice Evans talked throughout the incident, telling Ms. H she was enjoying it. Justice Evans also offered Ms. H money to buy lingerie to wear for him.
13. On a separate occasion in or about August 2002, Justice Evans called Ms. H into his chambers. As she stood up to leave, he approached her and manoeuvred her backwards through his change room and into his private washroom. She was wearing a skirt; Justice Evans took down her underwear and performed oral sex on her. He suggested to her that she tell her manager she was sick and leave for the day so that they could meet at a hotel. She refused.
14. On a separate occasion in or about August 2002, Ms. H was in Justice Evans' chambers at the Barrie courthouse and he manoeuvred her into his washroom. He took her hands and began

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rubbing them across his crotch and putting her hands in his pants. He pushed her towards the floor and told her to her to perform oral sex on him, which she did.

15. On a separate occasion in or about August or September of 2002, Ms. H was in Justice Evans's chambers when he came up behind her and began grabbing her breasts through her clothes. Another court employee knocked on the door and walked in, and Justice Evans stopped.

MS. C

16. In or about December 2002, Justice Evans and Ms. C were chatting in his chambers while court was in recess. During discussion of Christmas gifts for Justice Evans's wife, Ms. C suggested that her husband's cousin, a pilot, could provide a helicopter ride. Justice Evans inquired if the cousin was young and good-looking. When she indicated that she thought so, Justice Evans placed his open hand on her crotch, over her gown, and said words to the effect, “Well, I'd just hold a gun to him right here, then”. When she protested, he patted her on her buttocks, and said, “Ok, come on, let's go.” and proceeded back to court.

MS. A

17. On a series of occasions throughout 2000, and into early 2001, Justice Evans stood close to Ms. A and would on occasion touch Ms. A while standing close to her. These actions made her feel uncomfortable and she twice asked Justice Evans to step back.
18. On a separate occasion in 2000, Justice Evans telephoned Ms. A at home at approximately 11:00 p.m. There was no real reason for the call and the conversation was casual. Justice Evans asked Ms. A if he had woken her up. She said he had. He replied with words to the effect, “Well, now that you're awake, you can have sex with your partner.” Ms. A made no comment in reply.
19. On a separate occasion in 2000, Ms. A was alone with Justice Evans in his chambers in

Collingwood. She commented about a gentleman who was giving her some difficulty. Justice Evans rose from his desk and stood in front of Ms. A. He said she should have grabbed the gentleman who was giving her difficulty, and put his hand toward her groin and touched her there. Ms. A was given the impression that Justice Evans was trying to portray grabbing someone by the penis.

20. On a subsequent occasion, Justice Evans called Ms. A into his chambers and asked whether she had told anyone that he had sexually harassed her. She indicated she had. Justice Evans replied that there was a possibility of an investigation. He asked Ms. A what she would say if she was asked about the allegation of sexual harassment. She stated she would “tell the truth”. Justice Evans then said, “I'd prefer it if you said it was unfounded.” Justice Evans then went on to say that he could only recall being told once by Ms. A not to stand too close to him. Ms. A indicated she had told him twice.

MS. B

21. On September 5, 2000, Ms. B attended the swearing-in ceremony of the Barrie Chief of Police. Ms. B had known Justice Evans professionally for many years. As guests were socializing amongst themselves after the ceremony, Justice Evans and Ms. B greeted one another. Justice Evans reached out his hand in what she thought was a greeting, and touched Ms. B in her pubic area.



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de service qu'elle était malade et de partir pour la journée afin qu'ils puissent se rencontrer à l'hôtel. Elle a refusé.

14. À une autre occasion vers août 2002, M^{me} H était dans le cabinet du juge Evans au palais de justice de Barrie, et à un moment donné, le juge l'a entraînée dans sa salle de bains. Il lui a pris les mains, les a frottées sur le devant de son pantalon et les a glissées dans son pantalon. Il l'a poussée vers le plancher et lui a dit de lui faire une fellation, ce qu'elle a fait.

15. À une autre occasion, vers août ou septembre 2002, M^{me} H était dans le cabinet du juge Evans lorsque ce dernier s'est placé derrière elle et a commencé à lui péloier les seins à travers ses vêtements. Un commis a frappé à la porte et est entré, et le juge Evans s'est arrêté.

M^{me} C

16. Vers décembre 2002, le juge Evans et M^{me} C bavardaient dans le cabinet du juge pendant une suspension d'audience. Alors qu'ils discutaient des cadeaux de Noël à offrir à l'épouse du juge Evans, M^{me} C a suggéré une balade en hélicoptère, précisant que le cousin de son mari, un pilote, pourrait l'emmener. Le juge Evans a demandé si le cousin en question était jeune et beau. M^{me} C a répondu que c'était le cas, et le juge Evans a alors placé sa main ouverte sur la fourche de M^{me} C, par-dessus sa robe, et a dit en substance : « Eh bien, je vais devoir lui pointer un fusil juste là, alors. » M^{me} C a protesté, et le juge Evans lui a tapoté les fesses en disant, « OK, allons-y », puis ils sont retournés à la salle d'audience.

M^{me} A

17. À plusieurs reprises tout au long de 2000 et au début de 2001, le juge Evans s'est rapproché de M^{me} A et, de temps à autre, l'a touchée. Ces actes la mettaient mal à l'aise, et deux fois, elle a demandé au juge Evans de reculer.

18. À une autre occasion, en 2000, le juge Evans a téléphoné à M^{me} A chez elle vers 23 heures. Il

n'avait aucune raison valable de l'appeler, et ils ont parlé de choses et d'autres. Le juge Evans a demandé à M^{me} A s'il l'avait réveillée. Elle lui a répondu que c'était le cas. Le juge Evans a rétorqué en substance : « Eh bien, maintenant que vous êtes réveillée, vous allez pouvoir faire l'amour avec votre partenaire. » M^{me} A n'a rien dit.

19. À une autre occasion, en 2000, M^{me} A se trouvait seule avec le juge Evans dans son cabinet à Collingwood. Elle a parlé d'un homme qui lui causait des problèmes. Le juge Evans s'est levé de son bureau et s'est placé debout devant M^{me} A. Il a dit qu'elle aurait dû s'en prendre à cet homme, et a mis la main entre ses jambes et l'a touchée. M^{me} A a eu l'impression que le juge Evans voulait montrer comment attraper quelqu'un par le pénis.

20. À une autre occasion, le juge Evans a appelé M^{me} A dans son cabinet et lui a demandé si elle avait dit à quelqu'un qu'on l'avait harcelée sexuellement. Elle lui a répondu qu'elle l'avait fait effectivement. Le juge Evans a affirmé qu'il pourrait y avoir une enquête. Il a demandé à M^{me} A ce qu'elle dirait si on l'interrogeait au sujet de cette allégation. Elle a déclaré qu'elle « dirait la vérité ». Le juge Evans a alors dit : « Je préférerais que vous disiez que cette allégation n'est pas fondée ». Il a poursuivi en disant qu'il se souvenait que d'une seule occasion où M^{me} A lui avait demandé de ne pas se placer trop près d'elle. M^{me} A a répondu qu'elle le lui avait dit deux fois.

M^{me} B

21. Le 5 septembre 2000, M^{me} B a assisté à la cérémonie d'asssermentation du chef de police de Barrie. Elle connaissait le juge Evans sur le plan professionnel depuis de nombreuses années. Pendant que les invités discutaient après la cérémonie, le juge Evans et M^{me} B se sont salués. Le juge Evans a levé la main; M^{me} B croyait qu'il allait lui serrer la main, mais il l'a plutôt touchée dans la région pubienne.

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faire, a dit qu'elle parlait. Lorsqu'elle s'est levée, le juge Evans l'a empoignée et a commencé à danser avec elle. Elle a essayé de partir, et lorsqu'elle a mis la main sur la poignée de porte, il s'est penché et l'a embrassée. Elle pense qu'il l'a peut-être embrassée une seconde fois, lui disant : « Vas-y, embrasse-moi, embrasse-moi. » Elle a dit qu'elle devait partir et est sortie. Quelques jours plus tard le juge Evans l'a appelée chez elle et s'est excusé, mais a ajouté que de toute façon, elle n'avait pas résisté.

M^{me} H

11. M^{me} H travaillait avec le juge Evans au palais de justice de Barrie. Vers août 2002, le juge Evans a demandé à M^{me} H d'aller dans son cabinet, et lui a alors dit de prendre quelque chose à boire dans le réfrigérateur situé dans le placard. Elle s'est penchée pour prendre une boisson dans le réfrigérateur, alors qu'elle se relevait, le juge Evans était devant elle et l'a empoignée. Il a commencé à lui caresser les épaules, la poitrine et les bras et à lui froter les seins, disant : « Je sais que tu aimes ça. » M^{me} H croit qu'il l'a embrassée. Elle lui a dit qu'elle devait retourner à son poste.

12. À une autre occasion vers août 2002, le juge Evans a demandé à M^{me} H de passer à son cabinet. Elle s'est assise, puis le juge Evans a commencé à lui masser les épaules et à lui toucher les seins. Elle se souvient qu'il parlait continuellement pendant l'incident. Lui demandant « Aimes-tu ça? » à plusieurs reprises. Il a ensuite baissé la petite culotte de M^{me} H et lui a touché le vagin. Le juge Evans répétait tout au long de l'incident que M^{me} H aimait ça. Il lui a également offert de l'argent pour s'acheter des dessous qu'elle porterait pour lui.

13. À une autre occasion, vers août 2002, le juge Evans a demandé à M^{me} H de venir dans son cabinet. Alors qu'elle se levait pour partir, il s'est approché d'elle et l'a fait reculer vers son vestiaire et sa salle de bains privée. Elle portait une jupe; le juge Evans a baissé sa petite culotte et lui a fait un cunnilingus. Il lui a suggéré de dire à son chef

du gouvernement pour aller au palais de justice de Collingwood. Le groupe s'est arrêté pour acheter du café. À leur retour à la voiture, M^{me} D était debout à côté de la portière et du juge Evans, en attendant que le chauffeur déverrouille les portières. Alors qu'elle montait dans la voiture, le juge Evans lui a empoigné la fesse gauche.

8. Pendant les mois de février, d'avril, de juin et de septembre 2002, M^{me} D a travaillé avec le juge Evans. Chaque fois qu'elle ouvrait les portes pour aller à la salle d'audience, elle sentait le bras, la poitrine ou le ventre du juge Evans contre elle, ce qui la mettait mal à l'aise. À au moins deux reprises, il lui a demandé si elle voulait un bonbon. Elle a refusé, et il a tiré profit du fait qu'elle avait les bras chargés de dossiers pour lui mettre le bonbon dans la bouche. M^{me} D a reculé, a repoussé sa main et a refusé le bonbon.

M^{me} E

9. M^{me} E travaillait avec le juge Evans au palais de justice de Barrie. Elle était debout avec un groupe d'amis lors de la fête de Noël de la Criminal Lawyers' Association en décembre 2000. Cet événement avait lieu aux bureaux d'un groupe d'avocats de Barrie. M^{me} E bavardait avec ses amis et se trouvait dos au coin du mur; le juge Evans était debout à côté d'elle. Il a allongé le bras et lui a touché les fesses. Étonnée, elle a quand même continué de parler à ses amis. Elle pense qu'elle s'est alors éloignée du juge Evans.

M^{me} F

10. M^{me} F travaillait avec le juge Evans au palais de justice de Barrie. En février 2001, le juge Evans a téléphoné à M^{me} F chez elle vers 19 heures et lui a demandé de le rejoindre au palais de justice pour faire des photocopies. Le juge Evans était dans son cabinet, et elle y est entrée. Ils ont pris place sur le divan et il lui a posé des questions sur ce que serait un petit ami, un homme idéal pour elle, ce qui la rendrait heureuse. Elle a demandé où étaient les documents à photocopier, et voyant qu'il n'y avait pas de travail à

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Les détails de la plainte concernant la conduite du juge Kerry P. Evans sont énoncés ci-après :

M^{me} G

1. M^{me} G travaillait avec le juge Evans au palais de justice de Barrie. Un soir d'été 1999, le juge Evans l'a appelée à son appartement vers 23 heures 30. Il a insisté pour passer la voir à son retour chez lui pour lui remettre une lettre de références qu'elle avait demandée. M^{me} G trouvait bizarre qu'il veuille ainsi passer chez elle, mais elle lui a donné son adresse. Le juge Evans est arrivé et est resté pendant environ 15 minutes. Il tenait beaucoup à ce que le propriétaire de M^{me} G, qui travaillait également au palais de justice de Barrie, ne soit pas réveillé et ou mis au courant de sa visite.

2. En novembre 2001, après avoir découvert que M^{me} G était attirée par un avocat particulier, le juge Evans l'a appelée chez elle et lui a demandé de le mettre au défi d'en parler à cet avocat. Il lui a ensuite demandé ce qu'il mériterait en retour s'il osait le faire. Il lui a alors demandé, « Coucheriez-vous avec moi ? » M^{me} G a tenté de prendre le tout pour une blague. Le juge Evans a alors avoué qu'il avait des problèmes conjugaux, et lui a demandé si elle envisagerait d'avoir une aventure avec lui; il a dit en substance : « Coucheriez-vous avec un gros gars qui a une grosse queue ? » M^{me} G lui a dit qu'elle ne pouvait pas coucher avec lui, et la conversation a pris fin.

3. En décembre 2001, M^{me} G était dans un bar de Barrie avec un groupe d'amis. Le juge Evans était là lui aussi, et après l'avoir remarquée avec ses amis, il s'est approchée d'elle. Elle prenait place sur un tabouret, et il lui a mis les mains sur les cuisses, s'est penché et l'a embrassée sur les lèvres.

4. En janvier 2002, M^{me} G, qui avait envoyé une carte de Noël au juge Evans, lui a demandé à son retour au travail après le congé des fêtes s'il l'avait reçue. Il a dit non et l'a entraînée dans son cabinet, où il l'a embrassée. M^{me} G a dit « Non », puis il l'a embrassée sur les lèvres et lui a mis la langue dans la bouche. M^{me} G s'est dégage, mais

Il s'est placée entre elle et la porte alors qu'elle tentait de sortir. Il l'a embrassée à nouveau et lui a dit : « Dis "Kerry, j'aime t'embrasser" ». M^{me} G a hésité, a dit « Kerry... » puis a ajouté : « Je n'ai vraiment pas l'habitude de dire ce genre de choses », et « il faut que je m'en aille » avant de quitter son cabinet. Plus tard ce jour-là, alors qu'il quittait le parc de stationnement du palais de justice, il lui a fait un signe de la main pour lui demander de s'approcher et lui a dit, « Merci, ma petite. »

M^{me} D

5. M^{me} D travaillait avec le juge Evans au palais de justice de Barrie. Le 19 juin 2000, elle avait assisté à une rencontre avant un procès et avait été bouleversée par la preuve qu'elle avait entendue; elle a dû quitter la salle d'audience. Alors qu'elle était dans le couloir essayant de reprendre ses esprits, le juge Evans l'a remarquée et l'a emmenée dans son cabinet pour lui donner un mouchoir. Il a commencé à tirer sur sa tige pour la lui enlever. Elle a résisté, lui disant « Non ». Il a continué, et elle lui a dit qu'elle était attachée dans le dos et qu'il ne pourrait l'enlever. À ce moment-là, le superviseur de M^{me} D est entré, et le juge Evans s'est arrêté.

6. Vers février ou mars 2001, M^{me} D et le juge Evans travaillaient au palais de justice de Collingwood. Juste avant l'ouverture, M^{me} D est montée chercher le juge Evans dans son cabinet. Elle est restée dans le couloir en attendant qu'il mette fin à sa conversation téléphonique, le dos contre le mur, puis a baissé brièvement les yeux. Elle l'a entendu racrocher et se rapprocher d'elle. Il lui a pris les mains, y a glissé les doigts et l'a poussée contre le mur, qui était environ un pied derrière elle. Il a mis sa poitrine contre la sienne et l'a accueillie au mur. Elle se souvient qu'il lui a dit quelque chose, mais ne se rappelle pas quoi, ni comment elle s'est échappée exactement. Le juge Evans s'est éloigné d'elle puis s'est dirigé vers la salle d'audience.

7. En août 2001, deux employés de la cour et M^{me} D, avec le juge Evans, ont emprunté un véhicule

Par exemple, le juge Palmer y apportait son repas du midi trois jours par semaine. En plus des juges, le personnel du palais de justice entrait et sortait constamment du cabinet du juge Evans. La plupart des commis frappaient avant d'entrer, mais souvent, les juges entraient sans frapper. Le juge Evans ne verrouillait jamais la porte.

[100] Il y a un certain nombre de contradictions entre le témoignage de M^{me} H et ses déclarations antérieures, la plus importante ayant trait au nombre d'incidents de sexe oral. Cette contradiction porte sérieusement atteinte à l'exactitude de son témoignage.

[101] On a fait grand cas pendant l'audience du fait que M^{me} H n'avait rien remarqué d'habituel au sujet des organes génitaux du juge Evans pendant la fellation. Le juge Evans a témoigné qu'il se rase dans la région de l'aine, et qu'au moment de la fellation alléguée, il avait une éruption cutanée sur la jambe que M^{me} H aurait dû remarquer. Dans le contexte du témoignage de M^{me} H, nous jugeons que cette preuve n'est pas particulièrement utile et qu'il n'y a donc pas lieu de formuler d'autres commentaires à son sujet.

[102] Tout compte fait, nous ne sommes pas convaincus qu'il y a eu inconduite sexuelle à l'égard de M^{me} H. Nous rejetons donc sa plainte.

Conclusion

[103] Nous concluons qu'il y a eu inconduite tel que décrit dans les présents motifs. Nous communiquerons avec les avocats pour établir la date à laquelle se poursuivra l'audience en vue de déterminer la sanction appropriée.

FAIT à Toronto (Ontario), le 23 septembre 2004.

La juge Louise Charron

Le juge J. David Wake

Jocelyne Côté-O'Hara

Henry G. Wetelainen

politique de libre accès du juge Evans. En outre, M^{me} H a témoigné que lors de l'incident où elle a pris une boisson dans le réfrigérateur, le juge Evans lui a empoigné l'épaule et le sein droit. Cependant, pendant le contre-interrogatoire, on lui a rappelé qu'elle avait dit à la police que le juge Evans lui avait touché les épaules et les bras et « probablement la poitrine ». Elle a expliqué qu'elle était trop embarrassée pour dire le mot « sein » à ce moment-là, mais qu'elle avait désormais plus de facilité à le faire. Elle a été contre-interrogée sur la raison pour laquelle elle a mentionné à la police les deux incidents de sexe oral alors que dans son témoignage, elle a dit que ces deux incidents se sont produits en même temps, et elle a essayé d'expliquer cette contradiction apparente en soutenant que la police l'avait mal comprise, car elle voulait dire « un pour lui, un pour moi ». Or, dans son entrevue avec M. Hunt, elle a expliqué cette contradiction en lui disant qu'elle ne se souvenait pas exactement s'il y avait eu un seul incident de sexe oral ou deux, ou si ces incidents étaient produits au même moment ou à deux occasions. En outre, elle a témoigné que le juge Evans n'avait pas éjaculé pendant cette fellation mais a dit à la police qu'elle n'en était pas certaine. Elle a également fait preuve d'une hostilité évidente à l'égard du juge Evans pendant son témoignage.

[98] À maints égards, il est improbable que les incidents se soient produits aux moments que M^{me} H a indiqués. Elle a témoigné qu'ils auraient eu lieu en août et au début de septembre 2002. Or, d'après l'horaire du juge Evans, ce dernier n'aurait été présent au palais de justice de Barrie que les 1^{er}, 2, 6, 7 et 8 août. Ces jours-là, il quittait toujours le palais de justice le plus tôt possible pour rejoindre son épouse et sa fille au chevet de son beau-père malade à l'hôpital. Les autres jours, s'il ne siégeait pas à l'un des tribunaux satellites de Bradford, Collingwood ou Parry Sound, il prenait ses deux semaines de vacances ou assistait aux obsèques de son beau-père. En septembre 2002, le lundi 2 était la fête du Travail, et les 3, 4 et 5, le juge Evans siégeait à Barrie.

[99] Il est également peu probable que ces incidents se soient produits pendant la journée normale de travail. Bon nombre des autres juges passaient régulièrement dans le cabinet du juge Evans pour se servir du réfrigérateur ou du four à micro-ondes.

Par exemple, quand il avait besoin de quelque chose, elle insistait pour laisser la porte ouverte, ou elle disait à quelqu'un qu'elle allait dans son cabinet.

[90] M^{me} H n'a parlé de ces incidents à personne jusqu'à la suspension du juge Evans en décembre 2002 à la suite de la plainte déposée par M^{me} C. Elle a appris qu'un juge aurait envoyé un courriel à ses collègues pour leur faire part de son point de vue selon lequel le processus était injuste, et que les autres juges devraient envisager de ne pas travailler avec M^{me} C. M^{me} H a dit qu'elle était renversée que les juges traitent M^{me} C de cette façon. Elle en a ensuite parlé au juge Evans, lui demandant, « Et moi, dans tout ça ? » Il a répondu qu'elle devrait faire comme bon lui semble. Après la suspension du juge Evans, elle a révélé à M^{me} G que quelque chose s'était produit avec elle également, sans donner de détails. M^{me} G a donné le numéro de M^{me} H à la police, qui a communiqué avec elle. Elle a dit que la Police provinciale de l'Ontario et M. Hunt sont les seules personnes à qui elle a donné des détails sur ces incidents.

[91] Le juge Evans a nié avoir eu pareils incidents avec M^{me} H et s'être livré à des actes sexuels oraux avec elle. Il affirme ne jamais avoir été dans sa salle de bains avec elle ou avoir baissé son pantalon devant elle. D'après lui, le seul contact physique entre eux s'est produit un soir où il avait organisé un procès fictif. Elle l'a alors remercié d'avoir souligné sa participation, puis lui a donné une accolade, qu'il lui a rendue brièvement. Il a témoigné que ce n'est qu'au moment de la communication de la preuve sur ces plaintes qu'il a été mis au courant d'autres aspects de la situation personnelle de M^{me} H.

[92] Il a témoigné que de temps à autre, il demandait à M^{me} H de l'assister dans son cabinet à des fins professionnelles. Cependant, il a démenti ses allégations selon lesquelles il y aurait eu des contacts physiques ou sexuels, notamment qu'il lui aurait massé les seins, enlevé ses sous-vêtements ou suggéré d'aller à l'hôtel. Il a nié également avoir donné un chèque à M^{me} H. Il convient cependant qu'à une autre occasion, il lui a donné 80 \$ en espèces pour la dépanner.

[93] Les allégations de M^{me} H sont très graves. Il se dégage globalement de son témoignage non pas

que le juge Evans a eu des rapports sexuels consentis avec elle, mais plutôt qu'il aurait commis des agressions sexuelles graves à son égard. Nous avons évalué attentivement la preuve sur ces allégations en regard de la norme de preuve stricte qu'il faut appliquer en l'occurrence. À notre avis, cette norme n'est pas atteinte.

[94] Plusieurs aspects du témoignage de M^{me} H cas, il y a une certaine incohérence entre la façon dont elle s'est souvent présentée comme victime lors de son témoignage et sa conduite, telle qu'elle l'a décrite et manifestée lors de l'audience. Des précisions sur ces questions permettraient d'identifier M^{me} H; nous n'aborderons donc pas cet aspect de son témoignage.

[95] Il y a également des incohérences entre les incidents qu'elle a décrits et d'autres choses que le juge Evans a faites. Par exemple, elle a allégué qu'en août, le juge Evans l'a mise en contact avec un conseiller associé au palais de justice pour qu'elle discute avec lui de ses problèmes personnels. Si elle était effectivement la victime d'agressions sexuelles de la part du juge Evans, ces incidents auraient compté parmi les causes du stress qu'elle ressentait, et il serait alors renversant qu'il la dirige vers un conseiller associé au palais de justice de Barrie.

[96] M^{me} H éprouvait un stress extrême pendant la période en question, pour différentes raisons personnelles que nous ne pouvons décrire avec précision, encore une fois pour protéger sa vie privée. Cependant, nous remettons en cause sa capacité de se rappeler avec précision les événements d'août 2002.

[97] M^{me} H n'a pas semble témoigner de façon attentive et plusieurs fois, particulièrement pendant le contre-interrogatoire, elle a donné des réponses exagérées. Par exemple, elle n'était pas d'accord lorsqu'on lui a dit, pendant le contre-interrogatoire, que les gens entraient souvent dans le cabinet du juge Evans sans frapper. Elle a déclaré que son bureau était « essentiellement bouclé la plupart du temps » parce qu'il avait des réunions, et que « la porte était fermée la plupart du temps ». Or, ce témoignage va à l'encontre des déclarations de nombreux autres témoins, qui ont mentionné la

l'épaulé, a touché son sein gauche et l'a peut-être embrassée. *M^{re} H* a dit qu'elle était stupéfaite. Le juge Evans lui a demandé si elle allait bien; elle n'a pas répondu et a quitté son bureau.

[85] À une autre occasion, *M^{re} H* se trouvait dans le cabinet du juge Evans, encore une fois pour des raisons professionnelles. À un moment donné, elle prenait place dans son fauteuil; le juge Evans a alors commencé à lui masser les épaules, puis à se diriger vers le bas. Il lui a également pris la main et l'a frottée sur le devant de son pantalon. Selon *M^{re} H*, le juge Evans a ensuite baissé sa petite culotte et lui a frotté le vagin. Il lui parlait tout au long de l'incident, lui disant combien elle aimait ça.

[86] *M^{re} H* a décrit comment, un autre jour à l'heure du déjeuner, le juge Evans s'est approché d'elle alors qu'elle quittait son cabinet et l'a entraînée par derrière vers son vestiaire et sa salle de bains privée. Elle portait une jupe; le juge Evans a baissé sa petite culotte et lui a fait un cunnilingus. Elle a témoigné qu'elle ne cessait de lui dire qu'elle serait congédiée. Après qu'elle eut un orgasme, il lui a dit : « Je t'ai fait plaisir, maintenant c'est ton tour. » Il s'est appuyé contre la porte de la salle de bains et elle a commencé à lui faire une fellation. Ils ont etc interrompus lorsqu'une personne a frappé à la porte du cabinet.

[87] *M^{re} H* a également témoigné qu'à un moment donné, le juge Evans lui a suggéré de dire à son chef de service qu'elle était malade et de partir pour la journée afin qu'ils puissent se rencontrer à l'hôtel. Il lui a également offert de l'argent pour qu'elle s'achète des dessous qu'elle porterait pour lui.

[88] À une dernière occasion, à nouveau en août ou peut-être en septembre 2002, *M^{re} H* se trouvait dans le cabinet du juge Evans pour des raisons professionnelles au moment où ce dernier s'est placé derrière elle et a commencé à lui peloter les seins à travers ses vêtements. Un commis a frappé à la porte et est entré, et le juge Evans s'est arrêté.

[89] *M^{re} H* a témoigné qu'en plus de ces incidents précis, elle et le juge Evans s'étaient souvent embrassés pendant le mois d'août. Inverse a dit qu'elle a tout simplement commencé à l'éviter.

se répercutaient sur son état affectif. Nous ne mettons pas en doute son témoignage à ce sujet, mais il ne porte pas atteinte à la crédibilité du témoignage de *M^{re} G*.

[81] Compte tenu de l'ensemble de la preuve, nous sommes convaincus que l'appel téléphonique et le baiser dans le cabinet du juge Evans se sont produits conformément à la description de *M^{re} G*.

M^{re} H

[82] Au départ, *M^{re} H* a allégué avoir eu un contact sexuel avec le juge Evans à cinq reprises dans son cabinet; deux de ces incidents auraient fait intervenir une fellation. Quelque temps avant l'audience, *M^{re} H* a dit aux avocats présentant la cause qu'elle se demandait si les deux incidents de fellation n'étaient en fait qu'un seul incident. À l'audience, elle a dit qu'autant qu'elle sache, il n'y a eu qu'un seul pareil incident. Elle a fait en substance le témoignage suivant.

[83] Le témoin a commencé par décrire l'aide que le juge Evans lui a apportée à divers égards. Elle a décrit comment il l'avait aidée à dicter une lettre sur une cause dans laquelle elle avait été impliquée. Il l'a également aidée à une autre reprise, en juillet 2002, lorsque qu'elle était à court d'argent en raison de circonstances fortuites. Le juge Evans lui a alors donné un chèque de 150 \$ pour l'épicerie. Elle a témoigné qu'elle n'a pas encaissé le chèque, et qu'elle a plutôt demandé une protection de découvert à la banque. Elle a dit également qu'elle avait discuté fréquemment de ses problèmes personnels avec le juge Evans. Ensuite, elle a dit que tous les contacts sexuels s'étaient produits pendant le mois d'août et peut-être pendant la première semaine de septembre 2002. Son témoignage se résume comme suit.

[84] *M^{re} H* a témoigné qu'en août 2002, alors qu'elle était dans le cabinet du juge Evans pour des raisons professionnelles, elle a mentionné qu'elle avait soif. Le juge Evans lui a dit de prendre quelque chose à boire dans le réfrigérateur situé dans le placard. Ce dernier est en fait un petit couloir qui mène à la salle de bains privée du juge Evans. *M^{re} H* s'est penchée pour prendre une boisson dans le réfrigérateur; au moment où elle se relevait, le juge Evans est entré dans le placard, l'a retenue par

Cet incident éclairer le contexte des rapports entre le juge Evans et *M^{me} G*, mais ne révèle rien d'autre. Nous ne sommes pas convaincus non plus qu'il y ait eu un contact physique inconvenant au *Shirley's Bar*. Il y a peut-être eu un contact amical pendant la soirée, mais encore une fois, les événements de cette soirée ne révèlent rien de particulier.

[77] La question est de savoir si le juge Evans a fait ou non des propositions de nature sexuelle à *M^{me} G* de la façon dont celle-ci l'a décrit. Encore une fois, il faut s'en remettre à la crédibilité des parties.

[78] *M^{me} G* a fait un témoignage raisonnable. Elle n'a pas paru troublée pendant le contre-interrogatoire. En fait, comme nous l'avons déjà indiqué, elle n'a pas été contre-interrogée concernant la plus grande partie de son témoignage, sauf pour ce qui a trait à des incidents secondaires.

[79] Le témoignage du juge Evans ne semblait pas aussi sincère; parfois, il était même incroyable. Par exemple, il a mentionné un certain nombre d'occasions où *M^{me} G* lui aurait donné des directives et non l'inverse. Il aurait suggéré à *M^{me} G* diverses façons de lui remettre l'affidavit qui lui auraient évité de passer chez elle, mais elle les aurait toutes rejetées, de sorte qu'il a dû le lui livrer le soir même après 23 heures chez elle, à quelques minutes de distance du palais de justice, en direction opposée à son propre domicile. Le souvenir précis que le juge Evans semble avoir des circonstances qui ont entouré la livraison de l'affidavit en 1999 et la soirée au *Shirley's Bar* en 2001 d'après son témoignage très détaillé semble incongru compte tenu de la banalité relative de ces événements. Sa description de son attitude et de sa conduite à l'égard de *M^{me} G*, comme dans le cas de *M^{me} F*, semble contraire à l'opinion générale selon laquelle il aurait une personnalité amicale, accessible et compatissante.

[80] En janvier 2002, le juge Evans éprouvait des problèmes de santé. Le 7 janvier, il a reçu un diagnostic de lymphome non hodgkinien. Le 10 janvier, il en a parlé au juge Palmer. Le juge Evans a travaillé uniquement au palais de justice de Barrie certains jours de janvier, car il siégeait aux tribunaux satellites de Bradford ou *Party Sound* ou avait des rendez-vous chez le médecin. Le 15 janvier, il a subi une biopsie. Il a témoigné que ses problèmes de santé

passer chez elle pour le lui remettre. À son arrivée, elle était dehors à côté de l'entrée de porte; elle portait un t-shirt et un pantalon d'entraînement, et lui a fait un signe de la main. Il lui a dit de rentrer dans la maison pour ne pas « mourir de froid ». Il a passé environ 10 minutes dans la maison avec elle pour recevoir l'affidavit. Après leur discussion, *M^{me} G* a demandé au juge Evans s'il voulait dire bonjour au membre du personnel du palais de justice qui vivait à l'étage, mais il a répondu que non, ajoutant : « Je ne veux même pas que tu lui parles de ma visite, autrement ça va faire jaser au palais de justice. » Il a ensuite rédigé deux lettres de références pour *M^{me} G*.

[73] Le juge Evans a reconnu avoir été mis au courant de l'intérêt de *M^{me} G* à l'égard de M. M. Il a dit qu'il en était stupéfait, car il ne savait pas que M. M. avait rompu avec son épouse. Le juge Evans a témoigné que *M^{me} G* lui a dit : « J'ai brisé son mariage. » *M^{me} G* n'a pas été contre-interrogée sur cette affirmation.

[74] Le juge Evans a également fait un témoignage très détaillé sur la soirée au *Shirley's Bar*. Il a reconnu y avoir rencontré *M^{me} G* un soir. Cependant, il était avec son ami M. Regan pendant toute la soirée, et le restaurant était rempli de procureurs de la Couronne et d'autres connaissances. Il a nié avoir touché *M^{me} G* de la façon dont elle l'a décrit.

[75] Pendant le contre-interrogatoire, le juge Evans a fait part de deux incidents qui ont froissé *M^{me} G*. Il a déclaré qu'il était sur le point de quitter une fête de Noël en 2001 lorsque *M^{me} G* s'est approchée de lui et lui a demandé de rester parce que son ancien petit ami était encore là avec sa nouvelle petite amie. Il a retiré sa main de son bras et lui a dit qu'il rentrerait chez lui. Il a également témoigné qu'en novembre 2002, *M^{me} G* lui a fait part de son mécontentement parce qu'il ne lui avait pas rédigé de lettre de références; il lui a répondu qu'elle était égocentrique, qu'il ne rédigeait pas de lettres de références sur demande et qu'il n'en écrirait jamais pour elle. *M^{me} G* n'a pas été contre-interrogée au sujet de ces deux incidents.

[76] Il ne nous semble pas nécessaire de déterminer les circonstances précises qui ont fait en sorte que l'affidavit a été livré chez *M^{me} G* tard en soirée.

études, et est retournée à son ancien poste au palais de justice de Barrie en septembre 2001.

[69] M^{me} G a témoigné qu'elle avait eu des conversations personnelles avec le juge Evans, surtout au sujet de ses choix de carrière. Il l'aidait en lui donnant des conseils. À l'automne 2001, elle a commencé à avoir une liaison avec un avocat, M. M^{me} G a témoigné que le juge Evans l'a appelée chez elle un soir, après le dîner, ou à l'heure du dîner. Il lui a dit : « J'ai entendu dire que vous aimez bien un certain avocat. » Elle a répondu : « Oui. » « Est-ce que vous me mettez au défi de dire à M. M. que vous l'aimez bien? » a-t-il ajouté. « Pourquoi pas? » a-t-elle dit. « Qu'allez-vous me donner en échange? Coucheriez-vous avec moi? Coucheriez-vous avec un gros gars qui a une grosse queue? » a dit le juge Evans. Il a ajouté qu'il avait des problèmes conjugaux et lui a demandé si elle voulait avoir une aventure avec lui. Elle lui a dit qu'elle n'avait pas de rapports sexuels en dehors d'une relation. Elle était stupéfaite et craignait pour son emploi si elle parlait de cet incident à quelqu'un. À l'époque, elle n'avait pas la sécurité d'emploi. Elle en a parlé à sa sœur, et aussi à M. M mais sans entrer dans les détails. M^{me} G n'a pas été contre-interrogée sur cet incident.

[70] M^{me} G a dit ensuite qu'elle avait pris congé pendant cinq semaines pendant la période de Noël 2001 et qu'elle avait envoyé des cartes de Noël à plusieurs personnes, y compris au juge Evans. Dans sa carte, elle a ajouté une note le remerciant des conseils qu'il lui avait donnés sur un emploi possible. À son retour, alors qu'ils se trouvaient dans le cabinet du juge Evans, elle lui a demandé s'il avait bien reçu la carte. Il l'a alors embrassée et lui a fait une accolade pour lui souhaiter joyeuses fêtes. Ensuite, cependant, il ne s'est pas éloigné et a dit : « Ce n'est pas ce que je veux. » Il l'a alors embrassée avec la langue. « Des gens pourraient entrer », a-t-elle dit. Il a alors fermé la porte, a recommencé et lui a demandé de répéter : « Dis, "Kerry, j'aime que tu m'embrasses" ». Elle a commencé par dire « Kerry » mais elle n'a pu continuer, elle a dit : « Je n'ai vraiment pas l'habitude de dire ce genre de choses », et « il faut que je me prépare pour l'audience ». Elle a pensé à déposer une plainte officielle mais craignait de perdre son emploi. À la fin de la journée, dans le parc de stationnement, il lui a fait un signe lui

demandant de s'approcher de lui avec sa voiture; elle a baissé sa fenêtre et il lui a dit : « Merci. Merci pour aujourd'hui. » À son avis, il l'a remerciée pour le baiser ou pour n'avoir rien dit. M^{me} G n'a pas été contre-interrogée sur cet incident non plus.

[71] M^{me} G a ensuite décrit un incident qui se serait produit au Shirley's Bar : le juge Evans serait allée la rejoindre à son siège, aurait mis les mains sur ses cuisses et l'aurait embrassée. D'après le contre-interrogatoire sur cet incident, il semble que M. Regan, un ami du juge Evans, aurait été présent pendant toute la soirée. Le témoin a convenu que M. Regan accompagnait le juge Evans, mais pas au moment précis de l'incident. Elle a reconnu qu'elle ne se sentait pas bien ce soir-là car une petite amie de M. M était venue. Dans une déclaration antérieure à la police, M^{me} G avait dit que le juge Evans lui avait donné un baiser sur la joue. Elle a soutenu dans son témoignage qu'il s'agissait en fait d'un baiser sur les lèvres et qu'elle avait fait erreur lors de sa déclaration à la police. Elle a dit que la police accordait plus d'intérêt à l'incident qui s'est produit au palais de justice. M^{me} G a entrepris des poursuites civiles contre le juge Evans conjointement avec M^{me} D.

[72] Le juge Evans a soutenu que ces incidents avec M^{me} G ne se sont pas produits. Il a fait un témoignage détaillé sur les circonstances qui ont entouré la livraison de l'affidavit chez elle. Il a dit l'avoir livré en hiver, et non en été. Il est allé au bureau après le dîner un jeudi soir, et se préparait à l'audience qui devait avoir lieu à Collingwood le lendemain. Dans la pile de documents sur son bureau, il a trouvé l'affidavit que sa secrétaire avait tapé à sa demande pour la demande de prêt d'études de M^{me} G. Celle-ci lui avait laissé une note lui demandant de l'avertir lorsque l'affidavit serait prêt, mais elle ne lui avait pas dit que c'était urgent. Néanmoins, le juge Evans l'a appelée chez elle peu après 23 heures et lui a dit que l'affidavit était prêt et qu'elle devrait passer au palais de justice le lendemain pour le signer. Elle lui a dit qu'elle avait été malade ce jour-là au palais de justice et qu'elle n'était pas censée y retourner le lendemain. Il lui a offert de le laisser au bureau pour qu'elle passer le signer lundi, mais elle lui a dit qu'elle devait l'envoyer vendredi, le lendemain, autrement le prêt ne lui serait pas accordé. C'est alors qu'il lui a offert de

[66] Le témoignage du juge Evans sur ses rapports avec Mme F n'a pas semblé aussi crédible. Sa description de trois rencontres distinctes, de nature essentiellement professionnelle, qu'il aurait eues avec Mme F ne cadrait pas avec la tenue très personnelle des propos qu'ils ont échangés. En fait, sa déclaration a semblé incongrue par rapport à la preuve abondante sur sa nature amicale, compatissante et empathique, et au fait qu'il l'a appelée une ou deux fois à la maison pour lui demander comment elle allait.

[67] Le témoignage de Mme F sur les propositions amoureuses du juge Evans sont étayées par un témoignage semblable de la prochaine plaignante, que nous examinons ci-dessous. Selon l'ensemble de la preuve, nous sommes persuadés que l'incident qui s'est produit dans le cabinet du juge Evans s'est déroulé comme l'a décrit Mme F.

Mme G

[68] Mme G a décrit pour commencer un incident qui s'est produit en 1999, après que le juge Evans leur aida à préparer un affidavit dont elle avait besoin pour obtenir des prêts d'études, car elle comptait retourner à l'université dans l'Ouest du pays. Un soir, il l'a appelée à la maison à 23 heures 30 pour lui dire qu'il avait signé l'affidavit. Elle l'a remercié et lui a demandé de le glisser dans la boîte aux lettres interne au bureau, mais il a dit qu'il passerait le lui remettre chez elle ce soir-là, et elle a répondu « d'accord ». Elle était étonnée qu'il connaisse son numéro de téléphone. Elle lui a peut-être donné son adresse par téléphone; elle ne s'en souvenait pas. Elle vivait dans un logement localisé dans une maison située à environ trois minutes du palais de justice. Un autre membre du personnel du tribunal était propriétaire de la maison et vivait à l'étage. Le juge Evans est resté environ 15 minutes, et à son départ, il a dit à Mme G de ne rien dire à cet autre membre du personnel, car sa visite serait mal jugée. Pendant le contre-interrogatoire, il est ressorti que le juge Evans devait lui apporter l'affidavit en le recevant. Le témoin a indiqué que ce n'était pas vrai, et que les choses ne se sont pas déroulées de cette façon. Le juge Evans lui a également donné une lettre de références, puis elle est retournée aux

déroulées dans son cabinet, une fois la journée de travail terminée. Il a reconnu lui avoir alors donné un chiot en peluche, pour qu'elle ait un chien à qui parler. La conversation s'est terminée vers 18 heures, et alors qu'elle sortait du cabinet, Mme F a commencé à pleurer et à rire un peu, et elle a donné une accolade au juge Evans. Il a dit également qu'elle était revenue l'embrasser sur la bouche, et qu'il l'a embrassée également, pendant environ cinq secondes. Selon le juge Evans, lui et Mme F se seraient alors détachés brusquement et se seraient excusés. Bien qu'il ait nié l'avoir appelée chez elle en février 2001, le juge Evans a témoigné qu'il l'a peut-être appelée à la maison pour « voir comment elle allait » à d'autres occasions, sans pour autant se rappeler l'avoir fait.

[63] Les versions de Mme F et du juge Evans concordent à bien des égards. Il est évident qu'ils entretenaient de bons rapports; le juge Evans l'a d'ailleurs dit expressément dans son témoignage. Mme F traversait une période difficile de sa vie; elle a discuté de bon nombre de ses problèmes personnels avec le juge Evans, ce qui lui a été très utile. C'est là tout à fait conforme à la preuve de moralité que nous avons entendue.

[64] Cependant, les deux versions comportent des incohérences importantes. Selon le juge Evans, à part les tapes sur le postérieur, l'incident dans son cabinet n'avait consisté qu'en un moment où d'abord Mme F puis lui-même, sous le coup de l'émotion, avaient ressenti le besoin de s'embrasser. Par contre, selon Mme F, le juge Evans a abusé de sa situation d'autorité pour faire venir Mme F dans son cabinet et lui faire une proposition amoureuse. Pour trancher, nous devons donc nous appuyer sur la crédibilité.

[65] Mme F a semblé une personne très douce et amable. Elle ne ressentait aucune animosité envers le juge Evans; au contraire, elle lui était reconnaissante pour son assistance et son amitié. Elle a témoigné sans exagérer et de façon équitable. Par exemple, invitée à commenter la version de l'incident du baiser donnée par le juge Evans, elle a répondu simplement à chaque question qu'elle ne se souvenait pas que cela s'était produit. Pendant le réinterrogatoire, appelée à dire si l'incident s'était déroulé d'une certaine façon, elle a témoigné qu'elle s'en souviendrait si cela avait été le cas.

des problèmes personnels, et qu'elle fondait souvent en larmes. Elle a reconnu avoir discuté de certains de ces problèmes avec le juge Evans, qui a fait des démarches pour lui donner accès à une aide professionnelle. Elle s'est rappelé vaguement une conversation au sujet des chiens et du fait qu'elle aimerait en avoir un; elle s'est souvenu que le juge Evans lui a donné en cadeau un chien en peluche, et elle a convenu que ce geste l'avait touchée. On lui a dit qu'à ce moment-là, elle aurait embrassé le juge Evans, au point où il ne s'agissait plus que d'un simple geste amical, et qu'elle s'était excusée. Elle a témoigné qu'elle ne s'en souvenait pas, et que si ça s'était produit, elle s'en rappellerait.

[61] Le juge Evans a déclaré qu'il avait rencontré *M^{re} F* pour la première fois à l'automne 2000. Elle lui a demandé conseil concernant des questions personnelles. Pendant cette première conversation, elle lui a dit qu'elle était irritée de faire des erreurs pendant son travail. Il lui a demandé si quelque chose n'allait pas, et elle lui a répondu qu'elle faisait de l'insomnie et qu'elle prenait des somnifères. Pendant la journée, elle était somnolente et faisait des erreurs, de sorte qu'elle craignait de perdre son emploi. Pendant cette conversation, elle a également parlé d'un problème personnel, et le juge Evans lui a recommandé un psychologue. Lors de leur deuxième conversation, il lui a dit qu'il avait appelé le médecin en son nom et elle l'a remercié. Cependant, elle craignait de ne pas avoir les moyens de payer les séances, et il lui a recommandé de prendre un second emploi au marché aux puces local.

[62] Pendant une troisième conversation, le juge Evans a témoigné que *M^{re} F* lui avait dit qu'elle éprouvait des difficultés amoureuses. Il a témoigné qu'elle avait abordé le sujet, et qu'elle lui avait dit qu'elle se retrouvait toujours avec un homme qui ne lui convenait pas. Il lui a demandé quel genre d'homme elle désirait, et ils ont continué de discuter à ce sujet. Le juge Evans a convenu qu'ils avaient eu une conversation sur l'« homme idéal » et sur ce qui la rendrait heureuse, mais il a témoigné que cette conversation avait eu lieu à un autre moment et s'était déroulée de manière différente. Il a nié l'avoir appelée à son domicile en février 2001 pour qu'elle vienne au bureau l'aider à faire des photocopies. Il a déclaré plutôt que cette troisième conversation s'était

[58] Le juge Evans était dans son cabinet, et *M^{re} F* y est entrée. Le juge Evans a fermé la porte et s'est assis sur le divan et *M^{re} F* a fait de même. Le juge Evans a parlé d'une foule de choses; il lui a posé des questions sur ce que serait un petit ami idéal pour elle, ce qui la rendrait heureuse. Ils ont également discuté de différents aspects de la vie personnelle de *M^{re} F*, mais pas de photocopie. *M^{re} F* a dit qu'elle ne savait pas comment c'était arrivé, mais qu'ils avaient fini par danser, sans musique. Pendant qu'ils dansaient, le juge Evans continuait de lui poser les mêmes questions sur sa vie personnelle. Elle a regardé l'heure et décidé que s'il n'y avait pas de photocopies à faire, elle rentrerait chez elle faire de l'exercice. À la porte, juste avant son départ, il l'a embrassée. Elle s'est sentie mal à l'aise, mais pas menacée. Elle n'a toutefois pas réagi car elle n'aime pas les conflits. Quelques jours plus tard, le juge Evans l'a appelée; elle ne se souvenait pas de ses propos exacts, mais elle a jugé qu'il lui présentait ses excuses. À la fin de la conversation, il a dit : « Tu ne m'as pas repoussé. » D'après elle, il voulait dire qu'il n'y avait pas de problème car elle n'avait pas résisté.

[59] *M^{re} F* a également témoigné qu'à quelques reprises, le juge Evans lui a donné « une tape sur les fesses » avant d'entrer dans la salle d'audience. Ce geste l'irritait. Cependant, elle n'y voyait rien de sexuel, mais plutôt une tape « comme ou en voit au football », c'est-à-dire, selon nous, un geste visant à stimuler l'esprit d'équipe. Le juge Evans n'a pas nié avoir tapé sur le postérieur de *M^{re} F* comme elle l'a décrit. Il a témoigné qu'ils avaient de bons rapports, et que comme avec d'autres greffières, il était d'usage de se donner des tapes dans le dos : « Quand on entre dans la salle d'audience, on frappe la personne, et je veux dire par là que je les tape du revers de la main. » Il a convenu qu'il est possible qu'il soit entré en contact avec les fesses de *M^{re} F* lorsqu'il l'a tapotée par-dessus sa robe, mais a nié l'avoir fait délibérément. Il ne fait aucun doute que même dans le contexte de l'esprit d'équipe, cette conduite est tout à fait déplacée.

[60] La situation de *M^{re} F* a été définie plus précisément lors du contre-interrogatoire. *M^{re} F* a témoigné qu'au début de 2001, il y avait relativement peu de temps qu'elle occupait son poste, et qu'elle le trouvait stressant. Elle a dit qu'elle éprouvait alors

». Pendant le contre-interrogatoire, elle a convenu qu'elle avait dit dans sa déclaration à la police qu'elle n'était pas sûre si le juge Evans lui avait empoigné la fesse, expliquant qu'à ce moment-là, elle voulait dire qu'il avait serré fort, mais dans son témoignage, elle a utilisé les mots anglais « grab », « touch » ou « feel » (empoigner, toucher, peloter) pour décrire l'acte en question, reconnaissant que ces mots n'ont pas toujours la même signification.

[55] Ce n'est qu'après avril 2001 que *Mme E* a parlé de l'incident à quelqu'un, en l'occurrence l'homme avec qui elle avait commencé à sortir et qui est maintenant son mari. Ce dernier a témoigné et confirmé que *Mme E* lui avait dit que le juge Evans lui avait mis la main sur la fesse lors d'une fête de Noël. Selon lui, cet incident n'avait pas semblé l'alarmer outre mesure. Il ne sait trop si *Mme E* lui a dit effectivement ou si elle lui a laissé entendre que ce contact avait été plutôt momentané, qu'il ne valait pas la peine de s'en plaindre, qu'elle ne savait pas s'il avait été de nature sexuelle ou si le juge Evans avait simplement la main un peu baladeuse.

[56] Le juge Evans se souvient d'avoir assisté à la fête de Noël en question, mais pas d'avoir parlé à *Mme E* ni même de l'y avoir rencontrée. Il nous semble tout à fait plausible qu'il ait pu oublier qu'il a rencontré ou à qui il a parlé à cette fête. Cependant, à notre avis, le témoignage de *Mme E* ne perd pas sa crédibilité. Nous sommes persuadés qu'il s'agit d'un autre incident où le juge Evans, en raison de son attitude trop amicale, et parce qu'il aime trop toucher les gens, est allé trop loin et a eu une conduite déplacée.

Mme F

[57] *Mme F* travaillait au palais de justice de Barrie. Elle a témoigné qu'un jour de février 2001, le juge Evans l'a appelée chez elle vers 19 heures, alors qu'elle s'était assoupie. Le juge Evans lui a dit qu'il avait besoin d'aide pour faire des photocopies et lui a demandé de le rencontrer au palais de justice. Elle a dit qu'elle n'avait pas envie de ressortir car c'était l'hiver. Cependant, elle avait l'impression qu'elle lui devait une faveur parce qu'il lui avait été très utile; il l'écoutait, l'aidait et l'avait traitée en amie.

que cette attitude n'était pas typique de *Mme D*. Le témoignage concorde également avec l'affirmation du juge Evans selon laquelle *Mme D* n'a plus travaillé avec lui pendant assez longtemps après ce jour-là. La conduite de *Mme D* donne à penser que l'incident s'est produit tel qu'elle l'a décrit. En effet, son attitude à l'égard du juge Evans a considérablement changé par la suite.

[52] En outre, *Mme D* n'est pas la seule à affirmer qu'elle a été touchée à la fesse de façon inconvenante. Nous avons déjà examiné le témoignage de *Mme C*, qui a déclaré que le juge Evans lui avait tapoté la fesse alors qu'ils chiraient dans la salle d'audience. Nous verrons plus loin le témoignage de *Mme F*, qui se souvient avoir fait l'objet de la même conduite à deux reprises. Mentionnons également le témoignage de *Mme E*, qui est encore plus semblable au compte rendu de cet incident. La ressemblance de ces allégations corrobore l'affirmation selon laquelle les témoins se trompent ou mentent. Nous sommes convaincus que le juge Evans a touché la fesse de *Mme D* alors qu'ils montaient dans la voiture, dans le parc de stationnement du restaurant McDonald.

Mme E

[53] *Mme E* a témoigné au sujet d'un incident qui s'est produit à la fête de Noël de la Simcoe County Criminal Lawyers' Association en décembre 2000 dans les bureaux d'un groupe d'avocats de Barrie. Elle discutait avec des invités dans un coin; le juge Evans était debout à côté d'elle, puis il a allongé le bras et lui a touché les fesses. Elle était un peu étonnée, mais n'a rien dit et a continué de discuter avec le groupe.

[54] *Mme E* a témoigné qu'elle n'avait pas beaucoup pensé à l'incident à ce moment-là. Elle a convenu que le contact a été momentané, sans pour autant le décrire comme étant furtif. Elle a dit qu'elle est certaine d'avoir été touchée. Elle a été contre-interrogée concernant sa déclaration à la police, selon laquelle elle n'était pas convaincue que l'atouche-ment était intentionnel et a témoigné qu'à bien y penser, elle croyait qu'il l'était effectivement. Appelée à décrire la pression exercée, elle a dit que le juge lui avait « empoigné » la fesse, mais pas brutalement, sans laisser de traces; « on m'a pelotée, si je puis dire

[49] Nous convenons que M^{re} D s'est sentie très gênée, sinon consternée, par le fait que le juge Evans la touchait inutilement pendant qu'elle faisait son travail. Nous acceptons son témoignage selon lequel en février 2001, le juge Evans lui a touché les mains et s'est tenu si près d'elle que son corps est entré en contact avec le sien. Nous acceptons également son témoignage sur les occasions où elle a travaillé avec le juge Evans en 2002, et où elle avait l'impression qu'il se tenait tellement proche qu'elle sentait contre elle son bras ou d'autres parties de son corps. Ce témoignage est conforme à ceux de presque tous les autres témoins dans cette enquête, et il est crédible. De nombreux témoins ont déclaré que la proximité du juge Evans ne les dérangeait pas et ne représentait qu'une manifestation de son tempérament amical; d'autres ont ressenti le besoin de lui demander de reculer et l'ont fait, mais tous ont souligné que cette conduite était très typique du juge Evans. Comme nous l'avons déjà mentionné, nous croyons que cette conduite est déplacée à l'égard d'employés tels que M^{re} D, qui est mal placée pour oser dire au juge Evans de reculer, et ne devrait pas se sentir obligée de le faire.

[50] Passons maintenant à l'incident qui s'est produit dans le parc de stationnement et que le juge Evans a nié. On n'a pas affirmé que le juge avait pu toucher accidentellement la fesse de M^{re} D alors qu'elle montait dans la voiture, mais plutôt que cet incident était improbable étant donné la distance entre le juge Evans et M^{re} D pendant qu'ils ouvraient leur portière respective. Nous rejetons cet argument. À notre avis, cet incident tel que décrit par M^{re} D est tout à fait plausible. Tout repose donc sur la crédibilité.

[51] Nous avons examiné attentivement la totalité du témoignage de M^{re} D. En tout temps, et particulièrement pendant le contre-interrogatoire, M^{re} D a témoigné avec beaucoup d'empressement et de spontanéité. En soi, son témoignage était tout à fait crédible, et il était également conforme aux autres témoignages. Par exemple, soulignons que cet incident se serait produit juste avant l'ouverture du palais de justice de Collingwood, voire le matin même. Le juge Evans et M^{re} D ont rendu compte de façon semblable des discussions amicales qu'ils ont eues plus tard ce jour-là. Le juge Evans a convenu

l'avait remarqué souvent; il a ajouté que M^{re} D sur le devant, mais elle avait toujours les mains dans sa robe. La démarche particulière de M^{re} D amusait les juges, qui l'appelaient « la sœur volante ».

[45] Le 2 août 2001, deux employés de la cour et M^{re} D, avec le juge Evans, ont emprunté un véhicule du gouvernement pour aller au palais de justice de Collingwood. Le groupe s'est arrêté pour acheter du café. À leur retour à la voiture, M^{re} D était debout à côté de la portière et du juge Evans, en attendant que le chauffeur déverrouille les portières. Alors qu'elle montait dans la voiture, le juge Evans lui a empoigné la fesse gauche.

[46] M^{re} D était stupéfaite que pareille chose se produise au beau milieu d'un parc de stationnement public. Cependant, elle n'en a parlé à personne à part son mari. Elle s'est juré de faire quelque chose si jamais il la touchait encore. Après l'incident du parc de stationnement, M^{re} D n'a pas travaillé avec le juge Evans pendant le reste de 2001.

[47] Cependant, pendant les mois de février, d'avril, de juin et de septembre 2002, M^{re} D a travaillé à l'occasion avec le juge Evans. Elle a témoigné que chaque fois qu'elle ouvrait les portes pour aller à la salle d'audience, le juge Evans la touchait au bras, ou elle sentait sa poitrine ou son ventre contre elle, ce qui la mettait mal à l'aise. Souvent il avait des jujubes dans sa poche et lui en offrait. Il fallait qu'elle refuse fermement et qu'elle recule pour éviter qu'il essaie de lui en mettre un dans la bouche.

[48] Pendant le contre-interrogatoire, M^{re} D a confirmé qu'un jour, elle et le juge Evans se sont disputés et que le ton avait monté. Cet incident s'est produit lors de l'ouverture du nouveau palais de justice de Collingwood, en août 2001. Elle a témoigné qu'elle était notamment chargée de faire respecter les protocoles, y compris une nouvelle mesure de sécurité conçue pour limiter l'accès au cabinet du juge et aux environs. Elle a eu alors un différend sérieux avec le juge Evans concernant le fait qu'il n'était permis à personne de revenir sans autorisation dans son cabinet. Elle a fait part de cet incident à son superviseur, et n'a pas été affectée au juge Evans pendant un certain temps.

un témoignage entendu dans la salle d'audience, a tenu de lui enlever sa robe, selon *M^{me} D*, ou la lui a effectivement enlevée, selon le juge Evans. *M^{me} D* n'a rien trouvé d'anormal à cet incident à ce moment-là. Ce n'est que plus tard, à la lumière d'autres incidents, qu'elle a conclu qu'il avait été inconvenant pour le juge Evans de lui détacher sa robe à l'arrière et de l'enlever. On ne sait trop pourquoi il était nécessaire d'enlever la robe de *M^{me} D*, mais il est vrai qu'elle était alors très bouleversée, et qu'il s'agissait de la consoler. Compte tenu des circonstances, il nous semble inutile de formuler d'autres observations sur cet incident. *M^{me} D* a mentionné les autres incidents suivants.

[42] Vers février 2001, *M^{me} D* et le juge Evans travaillaient au palais de justice de Collingwood. Juste avant l'ouverture, *M^{me} D* est allée chercher le juge Evans dans son cabinet. Pendant qu'elle attendait qu'il mette fin à une conversation téléphonique, elle est restée dans le couloir, à côté du cabinet, le dos au mur, et a baissé brièvement les yeux. Elle l'a entendu racrocher et se diriger vers elle. Il lui a pris les mains, y a glissé les doigts et l'a poussée contre le mur, qui était environ un pied derrière elle. Il a mis sa poitrine contre la sienne et l'a acculée au mur. Elle se souvient qu'il lui a dit quelque chose, mais ne se rappelle pas quoi, ni comment elle s'est échappée exactement. Le juge Evans s'est éloigné d'elle puis s'est dirigé vers la salle d'audience.

[43] *M^{me} D* a témoigné qu'elle était renversée du fait que le juge Evans se serve ainsi d'elle « comme si je n'étais rien ». À la première suspension de la matinée, elle a glissé les bras dans sa robe pour éviter d'être à nouveau touchée. Le juge Evans a essayé de lui prendre les mains, mais ses manches étaient vides. Il lui a demandé ce qu'il n'allait pas, et elle a répondu, « ce n'est rien, j'ai un peu froid ». Elle a témoigné qu'après l'incident, elle se mettait toujours les mains dans sa robe pour les garder hors de portée. Elle n'a parlé à personne de cet incident ce jour-là dans la salle d'audience, parce que le juge « est tout-puissant » et qu'elle craignait que personne ne la croie.

[44] Deux autres juges ont témoigné avoir observé *M^{me} D* déambulant avec les bras sous sa robe. L'un d'entre eux a dit qu'elle était toujours comme ça, même dans sa salle d'audience. L'autre a dit qu'il

[37] Nous ne sommes pas convaincus hors de tout doute raisonnable que le juge Evans avait l'intention d'agresser sexuellement *M^{me} C* en la touchant délibérément entre les jambes. Cependant, à notre avis, étant donné que *M^{me} C* se trouvait très proche du juge Evans pendant cette partie de la conversation, ce dernier, à tout le moins, aurait dû savoir qu'il risquait de toucher une partie du corps de *M^{me} C* avec la main. Nous jugeons qu'il a agi de façon imprudente, sans tenir compte de *M^{me} C* et en manquant de respect à son égard. Cet incident se rapproche donc de façon troublante des deux autres incidents impliquant *M^{mes} A* et *B*.

[38] Le juge Evans ne s'est pas excusé lorsque sa main est entrée en contact avec *M^{me} C*. Selon le témoignage de celle-ci, il lui aurait plutôt tapoté le derrière et dit « allons-y », avant d'entrer dans la salle d'audience. Nous acceptons ce témoignage. Une autre plaignante a déclaré en effet s'être fait tapoter les fesses avant d'entrer dans la salle d'audience. Nous traitons de ces allégations plus loin. Evidemment, il s'agit d'une conduite tout à fait inacceptable.

[39] D'autres incidents impliquant *M^{me} C*, qui ne sont pas énumérés dans l'avis d'audience, précisent le contexte de la situation et étayent notre conclusion selon laquelle le juge Evans a empiété de façon déplacée sur l'espace personnel de *M^{me} C*. Nous acceptons le témoignage de celle-ci selon lequel le juge Evans a déjà écarté ses cheveux qui tombaient devant ses yeux, pris un jujupe dans sa poche et le lui a mis dans la bouche malgré qu'elle eût résisté, et avait l'habitude de se placer trop près d'elle, ce qui la mettait mal à l'aise. Le juge Evans reconnaît que les incidents concernant les cheveux et le bonbon se sont produits, mais les a placés dans un contexte différent. Malgré tout, nous sommes d'avis que ses actes étaient injustifiés et déplacés.

M^{me} D

[40] *M^{me} D* a témoigné au sujet d'un certain nombre d'incidents lors desquels, à son avis, le juge Evans l'a touchée de façon inconvenante.

[41] *M^{me} D* et le juge Evans ont témoigné sur un premier incident lors duquel le juge Evans, qui voulait consoler et aider *M^{me} D*, très bouleversée par

M^{me} C

[34] Nous traiterons maintenant du témoignage de M^{me} C. L'incident impliquant M^{me} C a fait l'objet d'une accusation criminelle contre le juge Evans, qui a été acquitté à l'issue de son procès. Essentiellement, le juge de première instance n'était pas convaincu hors de tout doute raisonnable que le juge avait commis une agression sexuelle délibérée.

[35] Le 3 décembre 2002, le juge Evans et M^{me} C bavardaient dans le cabinet du juge pendant une suspension d'audience. Leurs déclarations sur le contenu précis de cette conversation varient un peu, mais en voici essentiellement la teneur. Alors qu'ils discutaient des cadeaux de Noël à offrir à l'épouse du juge Evans, M^{me} C a suggéré une balade en hélicoptère, précisant que le cousin de son mari, un pilote, pourrait l'emmener. Le juge Evans a demandé de quoi son cousin avait l'air. M^{me} C a répondu qu'il était jeune et beau, et le juge Evans a réagi à la blague en montrant ce qu'il devrait faire au pilote. M^{me} C a témoigné que le juge Evans a placé la main sur sa fourche, par-dessus sa toge, et a dit en substance : « Eh bien, je vais devoir lui pointer un fusil juste là, alors. » Dans son témoignage, le juge Evans a montré comment il a pointé l'index de la main droite vers le haut, puis abaissé le bras en disant essentiellement « il faudra le descendre », entrant accidentellement en contact avec le devant de la toge de M^{me} C. Les gestes et paroles de ces deux versions donnent à penser que le juge Evans a la blague évidemment, viserait la région génitale du pilote d'hélicoptère avec un fusil ou ferait feu à cet endroit.

[36] Il ne fait aucun doute que le juge Evans a touché la région génitale de M^{me} C avec la main. Il reste à savoir si cet acte était délibéré ou accidentel. Évidemment, nous ne sommes pas liés par la décision du juge de première instance au procès criminel. Nous pouvons également entendre la preuve dans un contexte beaucoup plus large qu'à l'allelation, nous devons appliquer une norme de preuve qui se rapproche beaucoup de la norme en matière criminelle, c'est-à-dire une preuve hors de tout doute raisonnable.

de le saluer car son amie, M^{me} A, lui avait parlé de lui. Elle a déclaré toutefois qu'elle se sentait à l'abri de tout comportement déplacé en raison de son âge, de la situation et de sa relation avec le juge Evans. À un moment donné pendant la réception, le juge Evans et M^{me} B se sont trouvés dans le même groupe d'invités et se sont salués. M^{me} B a dit que le juge Evans lui a serré la main droite tout en lui donnant une accolade avec le bras gauche; lorsqu'ils se sont rapprochés l'un de l'autre, M^{me} B a senti le dos de la main du juge Evans sur sa région pelvienne. Elle a reculé, pensant qu'il lui avait « fait une passe ».

[31] Pendant son témoignage, M^{me} B a montré comment elle et le juge Evans s'étaient salués. Le témoignage du juge Evans sur cet incident a été très semblable. Il s'est rappelé de la rencontre et de la façon dont il avait salué M^{me} B; cependant, il a affirmé qu'il ne s'était pas rendu compte que sa main était en contact avec elle de la façon dont elle l'a décrit. M^{me} B a reconnu qu'elle ne pouvait écarter la possibilité que ce geste ait été accidentel. Cependant, elle croyait qu'il était délibéré parce qu'autrement, elle se serait attendu à ce que le juge Evans s'excuse ou soit embarrassé, ce qui ne s'est pas produit. Le juge Evans a rétorqué qu'il ne pouvait s'excuser puisqu'il ne s'était pas rendu compte de ce contact.

[32] Nous ne doutons pas de la sincérité de M^{me} B ni du fait qu'elle juge honnêtement que ce contact ait été délibéré. Cependant, compte tenu de la façon dont elle et le juge Evans se sont salués, il est possible que le contact avec sa région pelvienne ait été accidentel. [33] Il importe toutefois de souligner que cet incident démontre les torts que peut causer l'habitude du juge Evans de se placer près de ses interlocuteurs. M^{me} B a été plutôt choquée par cet incident, et elle a dit en avoir parlé à son mari après leur départ. Elle en a également fait mention à son superviseur moins d'une semaine après. Cependant, elle a décidé de ne donner suite à sa plainte que beaucoup plus tard, après qu'elle eut appris l'acquisition du juge Evans lors d'un procès criminel pour des attouchements semblables. Elle a alors pensé qu'elle avait l'obligation de révéler l'incident, bien qu'elle l'ait fait à contrecoeur. Un comportement plus prudent aurait permis d'éviter cet incident, qui l'a beaucoup troublée.

ne voulant pas les obliger à s'occuper de la situation. Elle ne voulait pas perdre le contrôle de la situation et craignait de révéler l'incident. Une des amies à qui *M^{me} A* a parlé de ces incidents était *M^{me} B*, une autre plaignante.

[27] Raisonnablement et objectivement, il ne serait pas inconcevable pour *M^{me} A* de conclure que ces contacts physiques avaient une connotation sexuelle. En fait, le juge Evans a témoigné qu'on lui avait dit que *M^{me} A* avait averti les autres employés du fait qu'il se tenait trop proche de ses interlocuteurs, et il a déclaré qu'il était très contrarié à l'idée que cette conduite pouvait avoir pareille connotation. C'est en effet le risque de se livrer à pareille conduite, et ce qui la rend d'autant plus inacceptable.

[28] *M^{me} A* a témoigné au sujet d'un autre incident lors duquel le juge Evans l'a appelée chez elle vers 23 heures, qui justifie la gêne que lui cause la conduite du juge Evans. Encore une fois, les versions divergent quelque peu quant aux motifs de l'appel et à la teneur de la conversation, mais ces divergences ne sont pas significatives. Il semble évident, tant selon *M^{me} A* que selon le juge Evans, que les motifs de l'appel étaient de nature professionnelle. *M^{me} A* dormait, et le coup de fil l'a réveillée. Pendant la conversation, le juge Evans a dit, selon *M^{me} A* : « Maintenant que vous êtes réveillée, vous pouvez faire l'amour avec votre conjoint » ou, selon lui : « Désolé de vous avoir réveillée, mais j'imaginais que votre mari ne sera pas déçu ». Quoi qu'il en soit, le juge Evans avoue que ses propos avaient une connotation sexuelle et qu'ils étaient déplacés.

[29] Le juge Evans ne s'est pas conduit de façon appropriée à l'égard de *M^{me} A*.

M^{me} B

[30] *M^{me} B* a rencontré le juge Evans à la fin des années 1970, époque à laquelle elle a travaillé avec lui pendant deux étés. Elle l'a revu brièvement en 1995 ou 1996. Le 5 septembre 2000, elle a assisté à la cérémonie d'asssermentation du chef de police de Barrie avec son mari. Après la cérémonie, elle a assisté à une réception où se trouvaient de 70 à 100 personnes. Elle a remarqué que le juge Evans s'y trouvait. Elle a témoigné qu'elle se sentait mal à l'aise

bouche bée, a reculé sans rien dire, et la conversation a pris fin peu après. Après cet incident, *M^{me} A* évitait de se trouver seule avec le juge Evans. Ainsi, elle a dit à son superviseur qu'elle avait l'intention de ne plus aller seule dans son cabinet. Cependant, elle s'y présentait qui il l'y convoquait.

[25] Le juge Evans a témoigné qu'il était seul dans son cabinet avec *M^{me} A* à l'heure du déjeuner un jour où elle est venue discuter avec lui d'un problème professionnel qu'elle éprouvait avec un homme. Elle était visiblement bouleversée. Le juge Evans a dit que *M^{me} A* est une personne nerveuse, et qu'elle semblait sur le point d'éclater en sanglots. Elle lui a dit qu'elle avait peur de cet homme, et il lui a conseillé de faire appel à la police, et d'en parler à son mari, croyant qu'elle avait épousé un agent de police. Il lui a conseillé également d'en parler à ses collègues de travail pour qu'ils surveillent le parc de stationnement si elle devait prendre sa voiture tard en soirée. Il lui a dit ensuite : « Au pire, attrapez-le sur la rue principale de Collingwood ou dans le parc de stationnement de l'épicerie, puis criez-lui après le plus fort que vous pouvez et dites-lui de vous foutra la paix. » Il s'est alors levé de son bureau pour rejoindre *M^{me} A*, qui était debout. D'après son témoignage, le juge Evans lui a alors conseillé ce qui suit :

Je lui ai dit, « s'il s'approche de vous, vous allez devoir le frapper », et je lui ai frappé la jambe avec la main. Elle m'a répondu, « on va m'accuser de voies de fait ». « Mais non », que je lui ai dit. « Il faut que vous fassiez quelque chose, autrement personne n'en saura rien. »

Le juge Evans a également témoigné qu'il n'avait pas l'intention de la frapper pendant la conversation, qu'il s'agissait d'un accident et qu'elle n'avait pas semblé y réagir à ce moment-là.

[26] Même en s'appuyant sur le témoignage du juge Evans sur les circonstances qui ont mené au contact physique en question, on ne peut justifier ces actes démonstratifs qui, compte tenu de la proximité de *M^{me} A*, ont abouti inévitablement à un empiètement sur son espace personnel. *M^{me} A* a été plutôt bouleversée par cet incident et en a parlé à des amis, y compris un agent de police et un juge. Elle a dit qu'à ces deux derniers, elle a fait peu de cas de l'incident en disant qu'on l'avait touchée à la jambe,

[21] Le témoignage de *M^{re} A* sur ces incidents nous est apparu tout à fait crédible. Non seulement il était conforme à la preuve déposée sur l'habitude du juge Evans de toucher ses interlocuteurs et de se placer près d'eux, mais il a été étayé par le témoignage d'autres plaignantes, selon qui la proximité du juge Evans les mettait mal à l'aise. Nous mentionnons certains de ces témoignages plus loin.

[22] Le témoignage de *M^{re} A* cadrait également avec un autre incident que le juge Evans lui-même a relaté. Interrogé par son avocat sur cette question d'invasion de l'espace personnel, le juge Evans a reconnu qu'une ancienne employée, qui n'est pas impliquée dans nos délibérations, était déjà plainte de sa conduite. Selon lui, cette employée lui aurait dit qu'à cause de certains incidents qui s'étaient produits dans son enfance, elle se sentait mal à l'aise quand il se tenait trop près d'elle. Il a dit que cette plainte l'avait embarrassé et que par la suite, il avait tenu compte de ses réserves. Cet incident rappelle beaucoup le témoignage de *M^{re} A*.

[23] Comme nous l'avons déjà dit, il est inacceptable qu'une employée telle que *M^{re} A* soit contrainte de demander à une personne ayant autorité de respecter son espace personnel. Cette employée a le droit de travailler dans un environnement où elle n'est pas exposée à de tels empiètements indésirables.

[24] *M^{re} A* a mentionné un autre incident qui montre que le juge Evans n'a pas respecté son espace personnel comme elle le lui avait demandé. Cet incident se serait produit dans le cabinet du juge Evans ou, pendant une conversation, ce dernier l'a touchée dans la région pelvienne, à un endroit qu'elle a mentionné, qui semblait être une partie de l'abdomen située du côté gauche, juste sous l'os de la hanche. Leurs déclarations divergent quelque peu en ce qui a trait à la teneur de leur conversation, mais il semble évident qu'ils discutaient de difficultés professionnelles que *M^{re} A* éprouvait avec un homme. *M^{re} A* a témoigné que pendant cette conversation, le juge Evans s'est levé de son bureau pour se rapprocher d'elle, qui se tenait debout devant le bureau les bras croisés, et lui a dit qu'elle pourrait « l'empoigner ici ». Il a alors touché de la main la région mentionnée. Elle en a déduit qu'il lui suggérerait de frapper l'homme en question dans la région du pénis. Elle en est restée

[20] Nous commencerons par le témoignage de *M^{re} A*, car certains des incidents dont elle a parlé se sont produits il y a le plus longtemps, probablement en 1999. *M^{re} A* devait se rendre au cabinet du juge Evans de temps à autre pour lui faire signer des documents. Elle a comparu devant nous et a été décrite comme étant une personne très professionnelle qui tient à protéger sa vie privée et qui semble plutôt nerveuse. Elle a déclaré qu'à plusieurs reprises, le juge Evans lui a causé de l'embaras parce qu'il se tenait trop près d'elle, lui tapotait ou froissait le bras, ou lui tapotait l'épaule ou la nuque. Elle a affirmé lui avoir dit deux fois qu'il était un peu trop près d'elle, lui demandant de se placer à quelques pieds de distance. Chaque fois, il s'est exécuté. *M^{re} A* a ajouté qu'elle avait menti au juge Evans en affirmant avoir épousé un agent de police, parce qu'elle voulait qu'il pense qu'elle avait quelqu'un dans sa vie. Le juge Evans a convenu qu'il s'agissait d'une des premières choses qu'elle lui avait dites lorsqu'ils ont commencé à travailler ensemble.

M^{re} A

[19] Par conséquent, il ne peut pas incomber à l'employée d'établir une limite; cette tâche revient au juge Evans. Comme il ressort de notre analyse, nous croyons qu'à maintes reprises, le juge Evans a fait preuve d'une insensibilité troublante à l'égard de la « zone de sécurité » d'autres personnes. À quelques reprises, il est allé nettement trop loin.

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indésirable.

considéré de façon légitime comme un contact sexuel sans offrir immédiatement ses excuses pourrait être fesses, les jambes ou la région pelvienne ou génitale intégrité sexuelle. En effet, le fait de toucher les délibérée ou accidentelle, porte atteinte à son considérer que la conduite en question, qu'elle soit employée est du sexe opposé, il y a un risque qu'elle il s'agit exclusivement de femmes. Lorsque l'aspect à la question de la proximité; en l'occurrence, représailles. Le sexe de l'employé ajoute un autre son espace personnel avec confiance, sans crainte de d'une personne ayant autorité son droit au respect de s'attendre à ce qu'un employé fasse valoir auprès en est une autre. Il est à la fois irréaliste et injuste de est une chose, mais le faire à l'égard de subordonnés

[16] Une ordonnance interdisant la publication de renseignements pouvant identifier le témoin a été rendue dans le cas de cinq des huit plaintes, à la demande de la plaignante, conformément au paragraphe 51.6 (9) de la *Loi sur les tribunaux judiciaires*. Dans le cas d'une plaignante, qui se trouvait dans une situation particulière, nous avons déterminé à huis clos la portée précise de l'ordonnance de non-publication qui s'applique à cette plaignante est donc de plus grande portée que d'habitude. Conformément à l'esprit de ces ordonnances, aucune des plaignantes n'est désignée par son nom dans la présente, ce qui protège mieux l'identité des plaignantes qui ont demandé une protection. Chaque plaignante est désignée par une initiale qui ne correspond pas à son vrai nom. En outre, l'emploi qu'occupe chaque plaignante n'est pas mentionné. À titre indicatif, les plaignantes occupaient des postes de greffière, de sténographe judiciaire, de secrétaire de juge ou d'agent de probation.

[17] Avant de nous pencher sur chacune des allégations de chaque plaignante, nous formulons des observations générales sur l'habitude bien connue du juge Evans de se tenir très proche de ses interlocuteurs et de les toucher. D'entrée de jeu, nous tenons à préciser qu'à notre avis, cette habitude est un reflet des nombreuses qualités qui ont été attribuées au juge Evans, notamment qu'il est chaleureux, compatissant, amical, accessible, énergique et même exubérant. De toute évidence, le juge Evans et la collectivité ont su tirer profit de ces traits de personnalité. Cependant, comme l'ont souligné explicitement un certain nombre de témoins de moralité, il est facile d'imaginer que certains pourraient trouver ce comportement importun et déplaisant.

[18] Tout dépend de la personne visée. Agir de cette façon à l'égard d'amis, de parents ou de collègues se situant au même échelon hiérarchique

Evans. D'autres ont convenu, toutefois, que certaines personnes prendraient ombrage de pareille conduite. En outre, certains des témoins de moralité qui sont des collègues du juge Evans ont témoigné qu'ils lui avaient déjà dit en passant, mais à plusieurs reprises, qu'il se tenait trop proche d'eux quand ils discutent et qu'il devrait reculer. Nous y reviendrons.

[13] Nous avons tenu compte de la preuve de moralité lors de l'évaluation des différents témoignages conformément aux principes qui s'appliquent aux procès criminels. Une preuve de bonne moralité ajoute à l'improbabilité que l'accusé a commis une infraction de même qu'à la crédibilité de ce dernier [R. v. Tarrant (1981), 63 C.C.C. (2d) 385 (Ont. C.A.)]. Dans les cas d'allégations d'inconvenance sexuelle, il semble que la preuve de moralité ne parvienne pas aussi bien à appuyer l'hypothèse selon laquelle une personne est peu susceptible d'avoir commis l'infraction en cause [R. c. Profit, [1993] 3 R.C.S. 637]. Après tout, l'inconduite sexuelle ne se produit généralement pas en public et, dans la plupart des cas, n'influera donc pas sur la réputation de moralité d'une personne dans la collectivité. Cependant, bien que cette observation soit très probante dans la plupart des cas d'inconvenance sexuelle alléguée, dans la mesure où la conduite en question a eu lieu dans un endroit public, il y a lieu d'examiner attentivement le témoignage de moralité afin d'évaluer la vraisemblance des allégations [R. v. Strong, [2001] O.J. No. 1362 (C.A.)].

[14] Eu égard à ces principes, nous avons constaté que la preuve de réputation est plus utile pour parvenir à une conclusion concernant les actes qui, d'après les allégations, se sont produits en public. Nous en avons également tenu compte pour évaluer la crédibilité relativement à certaines des rencontres privées qui forment l'objet de la présente audience.

[15] Nous avons tiré nos conclusions concernant chaque plainte en nous fondant sur une évaluation de la preuve liée directement à l'incident en question. Cependant, pour évaluer le bien-fondé de cette preuve, nous avons tenu compte de temps à autre d'autres allégations dont la ressemblance n'était pas, selon toute probabilité, une simple coïncidence. Soulignons à cet égard qu'il n'y a aucune allégation de collusion en l'espèce. Néanmoins, nous avons

la collectivité comme étant honnête, intégrée et convenable. Tous les témoins, sauf deux, occupent un poste dans le secteur judiciaire : greffier, sténographe, agent de police, juge de paix, avocat, instructeur de droit ou juge. Chaque témoin de moralité a été appelé à passer en revue un recueil de témoignages comprenant de nombreuses lettres d'appui de membres de la collectivité recueillies par le juge Evans ou par ses avocats. Bien que ce recueil ne fasse pas partie de la preuve, son contenu, de même que le fait que ces témoins de moralité connaissent personnellement le juge Evans, ont formé le fondement probatoire de leur témoignage.

[11] Chaque témoin de moralité a attesté de la très haute estime à laquelle le juge Evans est voué dans la collectivité. De nombreux témoins ont souligné sa compassion, qu'il « fait tout en son pouvoir pour aider les autres », que personne n'hésiterait à lui demander conseil ou à se confier à lui. Un autre juge a décrit le juge Evans comme étant la « conscience de la cour ». Le juge Evans est également considéré comme un besogneux pour qui l'éducation juridique dans la collectivité revêt le plus grand intérêt. Tout le monde considère le juge Evans comme une personne très amicale et accessible.

[12] En plus de cette preuve générale de réputation, les avocats du juge Evans ont interrogé tous les témoins, y compris les plaignantes, sur la réputation qu'a le juge Evans de se tenir très proche de ses interlocuteurs et d'être démonstratif, en leur demandant si, selon eux, le juge Evans aimait toucher les gens. Tous les témoins se sont entendus pour affirmer que le juge Evans avait l'habitude de se tenir assez proche de ses interlocuteurs, au point où ceux-ci devaient parfois reculer. Ils ont soutenu que son espace personnel était beaucoup plus restreint que la moyenne des gens. Tous ont convenu que le juge Evans était une personne exubérante, qui touchait les gens en leur parlant : il leur prenait le bras, passait le bras sur leurs épaules, leur donnait des tapes sur les épaules, leur touchait les mains ou leur donnait des tapes dans le dos. D'après la plupart des témoins, le juge Evans agissait de la sorte aussi bien avec les hommes qu'avec les femmes. Les témoins de moralité ont affirmé que cette habitude ne les dérangeait pas; il s'agissait pour eux d'un reflet de la personnalité chaleureuse et enthousiaste du juge

(1992), 103 Sask. R. 61 (Q.B.); *Bater v. Bater* (1950), 2 All E.R. 458 (C.A.); *Hryciuk v. Ontario (Lieutenant Governor)* (1994), 18 O.R. (3d) 695 (Div. Ct.); *Re Khalil-Kareem v. Nova Scotia (Health Services and Insurance Commission)* (1988), 84 N.S.R. (2d) 425 (T.D.), infirmée pour d'autres motifs par (1989), 89 N.S.R. (2nd) 388 (C.A.), demande de pourvoi à la C.S.C. refusée (1989), 93 N.S.R. (2nd) 269 (S.C.C.); et *Glassman v. College of Physicians and Surgeons (Ontario)*, [1966] 2 O.R. 81 (C.A.);

b) Cette norme est toutefois proportionnelle à la gravité de l'allégation et de ses conséquences; si les allégations sont graves, le juge des faits doit examiner le bien-fondé de la preuve plus soigneusement qu'il n'aurait à le faire, par exemple, dans un cas de négligence moyenne;

c) Pour accueillir une allégation d'inconduite

avocat, il faut disposer d'une preuve claire, convaincante et forte : *Coates v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)* (1988), 52 D.L.R. (4th) 272 (Div. Ct.); *R. c. Oakes*, [1986] 1 R.C.S. 103 (C.S.C.); *Hryciuk*, (op. cit.); *Beckon v. Ontario (Deputy Chief Coroner)* (1992), 9 O.R. (3rd) 256 (C.A.); *Lanford v. General Medical Council* (1990), 1 A.C. 13 (P.C.); *Gillen v. College of Physicians and Surgeons (Ontario)* (1989), 68 O.R. (2nd) 278 (Div. Ct.).

Le Conseil accepte et adopte ces paramètres.

[9] Dans son évaluation de la crédibilité, le Conseil a tenu compte du fait qu'il ne devait pas agir d'un concours de crédibilité. À cet égard, il s'est appuyé essentiellement sur les directives que le juge de première instance adresse au jury dans un procès criminel, sous réserve évidemment du fait que la norme de preuve, comme nous venons de le mentionner, est différente.

[10] Cette enquête s'appuie dans une grande mesure sur les témoignages de moralité. Comme nous l'avons indiqué, 14 personnes ont témoigné de la réputation du juge Evans, qui serait reconnu dans

[6] Donc, l'inconduite d'un juge peut résulter de comportements mineurs méritant un avertissement ou une réprimande, ou aller jusqu'à des incidents d'une gravité telle qu'ils justifient la destitution. La Cour suprême du Canada a décrit le genre de conduite qui mériterait cette sanction grave dans *Therrien*, au paragraphe 147 :

Aussi, avant de formuler une recommandation et rend le juge incapable de s'acquitter des fonctions de sa charge (Friedland, *op. cit.*, p. 89-91).

[7] La sanction à imposer en l'espèce n'a pas encore été déterminée. Les avocats n'ont pas fait d'observations sur cette question car, évidemment, l'issue de cette enquête reposera sur les constatations particulières du Conseil quant à l'inconduite. Le Conseil a donc évité la question de la sanction pendant ses délibérations. Cependant, il a tenu compte de la gravité relative de chaque alléguation, qui se répercute sur la norme de preuve à appliquer. [8] La norme de preuve nécessaire pour accueillir une plainte pour inconduite professionnelle a varié au fil des ans mais semble s'être stabilisée. Dans *Law Society of Upper Canada v. G.N.*, [2003] L.S.D.D. No. 41 (L.S.U.C.), le comité renvoie à des observations de M. Gavin MacKenzie, expert des procédures disciplinaires professionnelles, parues dans son ouvrage *Discipline*, aux pages 26-40 à 26-42 :

[TRADUCTION]

Les paramètres suivants sont désormais reconnus :

a) La norme de preuve est celle qui est appliquée en matière civile plutôt que la norme criminelle, c'est-à-dire la preuve hors de tout doute raisonnable, même si l'inconduite alléguée représente également une infraction criminelle : *Camgoz v. College of Physicians and Surgeons (Saskatchewan)* (1989), 74 Sask. R. 73 (C.A.); *Miller v. Saskatchewan Nurses' Association*

[TRADUCTION] Les membres de notre magistrature sont, par tradition, astreints aux normes de retenue, de rectitude et de dignité les plus strictes. La population attend des juges qu'ils fassent preuve d'une sagesse, d'une rectitude, d'une dignité et d'une sensibilité quasi-surnaturelles. Sans doute aucun autre groupe de la société n'est-il soumis à des attentes aussi élevées, tout en étant tenu d'accepter nombre de contraintes. De toute façon, il est indubitable que la nomination à un poste de juge entraîne une certaine perte de liberté pour la personne qui l'accepte.

[5] Il ressort de cette analyse qu'un large éventail de comportements peuvent représenter une inconduite méritant réprobation, comme le laisse entendre le paragraphe 51.6 (11) de la *Loi sur les tribunaux judiciaires*, qui prévoit une série de sanctions possibles :

51.6 (1) Lorsque le Conseil de la magistrature décide de tenir une audience, il le fait conformément au présent article.

(11) Une fois qu'il a terminé l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclu ou non que la plainte n'est pas fondée ou, s'il conclut qu'il y a eu inconduite de la part du juge, il peut, selon le cas :

- a) donner un avertissement au juge;
- b) réprimander le juge;
- c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;
- d) ordonner que le juge prenne des dispositions précises, telles suivre une formation ou un traitement, comme condition pour continuer de siéger à titre de juge;
- e) suspendre le juge, avec rémunération, pendant une période quelle qu'elle soit;
- f) suspendre le juge, sans rémunération mais avec avantages sociaux, pendant une période maximale de trente jours;
- g) recommander au procureur général la destitution du juge conformément à l'article 51.8.

de cette confiance du public en son système de justice est garant de son efficacité et de son bon fonctionnement. Bien plus, la confiance du public assure le bien-être général et la paix sociale en maintenant un État de droit. Dans un ouvrage destiné à ses membres, le Conseil canadien de la magistrature explique :

La confiance et le respect que le public porte à la magistrature sont essentiels à l'efficacité de notre système de justice et, ultimement, à l'existence d'une démocratie fondée sur la primauté du droit. De nombreux facteurs peuvent ébranler la confiance et le respect du public à l'égard de la magistrature, notamment : des critiques injustifiées ou malavisées; de simples malentendus sur le rôle de la magistrature; ou encore toute conduite de juges, en cour ou hors cour, démontrant un manque d'intégrité. Par conséquent, les juges doivent s'efforcer d'avoir une conduite qui leur mérite le respect du public et ils doivent cultiver une image d'intégrité, d'impartialité et de bon jugement.

(Conseil canadien de la magistrature, *Principes de déontologie judiciaire* (1998), p. 14)

¶ 111 La population exigera donc de celui qui exerce une fonction judiciaire une conduite quasi irréprochable. À tout le moins exigera-t-on qu'il paraît avoir un tel comportement. Il devra être et donner l'apparence d'être un exemple d'impartialité, d'indépendance et d'intégrité. Les exigences à son endroit se situent à un niveau bien supérieur à celui de ses concitoyens. Le professeur Y.-M. Morissette exprime bien ce propos :

[L]a vulnérabilité du juge est nettement plus grande que celle du commun des mortels, ou des « élites » en général : c'est un peu comme si sa fonction, qui consiste à juger autrui, lui imposait de se placer hors de portée du jugement d'autrui.

(« *Figure actuelle du juge dans la cité* » (1999), 30 R.D.U.S. 1, p. 11-12)

Le professeur G. Gall, dans son ouvrage *The Canadian Legal System* (1977), va encore plus loin à la p. 167 :

Therrien (Re), [2001] 2 R.C.S. 3. La Cour, dans le contexte d'une enquête sur la conduite d'un juge, a discuté du rôle du juge dans la société canadienne. L'analyse de la Cour sur cette question est pertinente, et nous la reprenons intégralement :

3. Le rôle du juge : « une place à part »

¶ 108 La fonction judiciaire est tout à fait unique. Notre société confie d'importants pouvoirs et responsabilités aux membres de sa magistrature. Mis à part l'exercice de ce rôle traditionnel d'arbitre chargé de trancher les litiges et de départager les droits de chacune des parties, le juge est aussi responsable de protéger l'équilibre des compétences constitutionnelles entre les deux paliers de gouvernement, propres à notre État fédéral. En outre, depuis l'adoption de la *Charte canadienne*, il est devenu un défenseur de premier plan des libertés individuelles et des droits de la personne et le gardien des valeurs qui y sont enchaînées : *Beauregard*, précité, p. 70, et *Renvoi sur la rémunération des juges de cours provinciales*, précité, par. 123. En ce sens, aux yeux du justiciable qui se présente devant lui, le juge est d'abord celui qui dit la loi, qui lui reconnaît des droits ou lui impose des obligations.

¶ 109 Puis, au-delà du juriste chargé de résoudre les conflits entre les parties, le juge joue également un rôle fondamental pour l'observateur externe du système judiciaire. Le juge constitue le pilier de l'ensemble du système de justice et des droits et libertés que celui-ci tend à promouvoir et à protéger. Ainsi, pour les citoyens, non seulement le juge promet-il, par son serment, de servir les idéaux de justice et de Vérité sur lesquels reposent la primauté du droit au Canada et le fondement de notre démocratie, mais il est appelé à les incarner (le juge Jean Beetz, Présentation du premier confèrencier de la Conférence du 10^e anniversaire de l'Institut canadien d'administration de la justice, propos recueillis dans *Mélanges Jean Beetz* (1995), p. 70-71).

¶ 110 En ce sens, les qualités personnelles, la conduite et l'image que le juge projette sont tributaires de celles de l'ensemble du système judiciaire et, par le fait même, de la confiance que le public place en celui-ci. Le maintien

CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

DANS L'AFFAIRE des plaintes concernant M. le juge Kerry P. Evans

DEVANT :
M^{me} la juge Louise Charron, Cour d'appel de l'Ontario
M. le juge J. David Wake, juge en chef adjoint, Cour de justice de l'Ontario
M. Henry G. Wetelainen
M^{me} Jocelyne Côté-O'Hara

AVOCATS : M. Douglas C. Hunt, c.r.
M. Michael J. Meredith
M. Donald Park
M. Brian H. Greenspan
M. Seth P. Weinsiein
Avocats de M. le juge Kerry P. Evans

[1] Le Conseil de la magistrature de l'Ontario a tenu une audience conformément aux paragraphes 51.4 (18) et 49 (16) de la *Loi sur les tribunaux judiciaires*, L.R.O. 1990, chap. 43, concernant des plaintes formulées contre M. le juge Kerry P. Evans selon lesquelles celui-ci se serait conduit d'une manière incompatible avec l'exercice convenable de ses fonctions. Les détails de ces plaintes figurent à l'annexe A.

[2] Pendant l'audience, qui s'est échelonnée sur neuf jours, le Conseil a entendu huit plaignantes ainsi que d'autres témoins qui ont fourni une preuve à l'appui, 14 témoins appelés à comparaître pour le juge Evans et qui, pour la plupart, ont fourni une preuve de moralité, et le juge Evans lui-même. Pendant les périodes en cause, les huit plaignantes occupaient un poste dans l'appareil judiciaire à Barrie et dans d'autres palais de justice satellites. Toutes les allégations ont trait à la conduite du juge Evans hors de la salle d'audience. D'après la plupart d'entre elles,

[3] Le Conseil juge à l'unanimité que bon nombre des détails ont été prouvés et que, par conséquent, il y a eu inconduite. Nos constatations de fait s'appuient essentiellement sur des questions de crédibilité. Pour cette raison, les membres du comité sont parvenus à la même conclusion mais, parfois, pour des motifs différents. Cependant, chacun s'est fondé sur les principes exposés ci-après.

[4] Pour commencer, le Conseil s'est penché sur la notion d'inconduite dans le cas d'un juge. Pour ce faire, nous nous sommes appuyés sur les motifs donnés par la Cour suprême du Canada dans

Indemnisation

Aucune recommandation ne sera faite concernant l'indemnisation de la juge conformément au paragraphe 51.7 (4) de la Loi sur les tribunaux judiciaires.

DATE à Toronto, dans la province de l'Ontario, le 12 juillet 2004.

M. le juge en chef R. Roy McMurtry
M. le juge en chef adjoint David Wake
Me Julian Porter, c.r.
M. William James



juge de la Cour supérieure, d'un juge de la Cour de justice de l'Ontario et de quatre avocats confirmés de défense criminelle, dont l'un est un ancien procureur principal de la Couronne.
Ces lettres contiennent les observations suivantes à propos de Mme la juge Nicholas :

- (a) elle est compétente;
- (b) elle a son franc parler en salle d'audience, motivé par sa volonté de « démystifier » la procédure judiciaire;
- (c) elle est intuitive et très attentionnée;
- (d) elle accepte des affaires très difficiles et travaille de façon acharnée;
- (e) c'est une personne de très grande intégrité;
- (f) elle démontre généralement un très bon jugement et a une excellente connaissance de la loi.

Opinion des plaignants

La plaignante est tout à fait d'accord avec la soumission conjointe.

Conclusion

Nous sommes satisfaits que Mme la juge Nicholas est mortifiée et embarrassée par sa conduite comme l'a indiqué son avocat. Elle a aussi admis son in conduite de façon spontanée et sans délai, et elle a présenté des excuses sincères. De toute évidence, elle est embarrassée par les rapports qu'ont fait les médias de l'affaire et de la publicité de la plainte devant le Conseil qui en a résulté.

Le comité reconnaît que Mme la juge Nicholas a reconnu sans réserve la gravité de son in conduite et qu'elle est consciente du fait que la répétition d'une telle in conduite pourrait entraîner une décision plus grave.

Nous croyons qu'il est dans le meilleur intérêt de l'Administration de la justice que Mme la juge Nicholas continue à siéger en tant que juge, comme elle l'a fait depuis le dépôt de la plainte, il y a près de deux ans.

Présentation conjointe

qu'elle a eue par la suite avec M. Grumley constituent une faute de conduite professionnelle de sa part.

Mme la juge Nicholas accepte et reconnaît que sa conduite était inappropriée et indiscret et que son incompétence professionnelle constitue une question grave. Son avocat et l'avocat présentant la cause acceptent et ont soumis conjointement que cette incompétence, que Mme la juge Nicholas admet, « même si elle est grave, se trouve au bas de l'échelle de l'incompétence d'un magistrat. Par conséquent, elle devrait donner lieu à une sanction en rapport avec sa gravité, soit une sanction parmi les moins graves de celles prévues en cas d'incompétence de la part d'un juge. Les avocats ont fait valoir qu'une sanction conformément aux alinéas 51.6 (1) a) à d) constitue une sanction appropriée dans cette affaire. »

Les dispositions prévues par le paragraphe 51.6 (1) sont les suivantes :

- (a) donner un avertissement au juge;
- (b) réprimander le juge;
- (c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;
- (d) ordonner que le juge prenne des dispositions précises, tel suivre une formation ou un traitement, comme condition pour continuer de siéger à titre de juge;
- (e) suspendre le juge, avec rémunération, pendant une période quelle qu'elle soit;
- (f) suspendre le juge, sans rémunération mais avantages sociaux, pendant une période maximale de 30 jours;
- (a) recommander au procureur général la destitution du juge conformément à l'article 51.8.

Lettres de soutien

Comme indiqué ci-dessus, un mémoire de lettres de soutien de Mme la juge Nicholas a été déposé; ce mémoire comprenait les lettres de deux juges en exercice à la Cour supérieure de justice, d'un ancien

transférée au tribunal chargé des plaidoyers de culpabilité ce même jour afin qu'elle soit traitée par un autre juge. Me Guertin a demandé à réexaminer sa position. Après avoir annulé le plaidoyer, Mme la juge Nicholas est retournée au cabinet des juges au 6^e étage du palais de justice. Elle a ensuite eu le sentiment qu'elle aurait dû présenter ses excuses à Mme Segreto et à son avocat et a demandé à la réceptionniste de diffuser un appel demandant à Me Guertin de se rendre à son bureau de façon à ce qu'elle puisse lui présenter ses excuses.

Me Guertin ne s'est pas présentée au cabinet des juges. Mme la juge Nicholas est retournée en salle d'audience peu de temps après pour s'occuper de ses autres instances. Elle a demandé au commis du tribunal, Lucille Bordeleau, d'essayer de trouver Me Guertin et sa cliente et de leur demander de revenir en salle d'audience.

Mme Bordeleau a trouvé Me Guertin et lui a demandé de se présenter à la salle d'audience. L'avocat a dit qu'on lui avait déjà demandé de se présenter au cabinet des juges. Sur ce point, les témoignages de Me Guertin et de Mme Bordeleau diffèrent. Mme Bordeleau a déclaré que son intention était de ramener Me Guertin dans la salle d'audience où Mme la juge Nicholas attendait sur le siège. Me Guertin a indiqué avoir avisé la commis du tribunal qu'il avait demandé un avis juridique et qu'il considérerait qu'il serait inapproprié de sa part de parler de cette affaire avec Mme la juge Nicholas.

Rien ne suggère que Mme la juge Nicholas ait sommé l'avocat de se rendre en son cabinet ou en salle d'audience pour tout autre raison que la présentation d'excuses.

Mme la juge Nicholas a indiqué dans sa lettre qu'elle regretterait sincèrement la position dans laquelle Mme Segreto et son avocat avaient été placés et indiquait que la demande de récusation était « tout à fait appropriée ». Mme la juge Nicholas s'est entretenue du contenu de la lettre avec un juge principal du tribunal avant de l'envoyer.

Question de l'inconduite

Mme la juge Nicholas reconnaît que les déclarations qu'elle a faites en salle d'audience le 29 avril 2002, telles que décrites ci-dessus, ainsi que la conversation

même quartier, et M. Grumley travaillait directement en face du palais de justice, sur la Place Bell Canada. Alors que l'affaire n'était pas encore close, Mme la juge Nicholas a indiqué à M. Grumley que Mme Segreto avait comparu devant elle et qu'elle avait plaidé coupable à une accusation de fraude de l'aide sociale. Elle a dit à M. Grumley que ce n'était pas une affaire très grave et que Mme Segreto semblait gentille.

Mme Segreto a été mise au courant de cette conversation ultérieurement par sa nièce, la fille de Rick Segreto. Selon Mme Segreto, sa nièce l'aurait appris des enfants de M. Grumley lesquels l'auraient appris de M. Grumley lors d'un dîner en famille.

Dans sa plainte, Mme Segreto affirme que « Mme la juge Nicholas a divulgué tous les détails possibles et imaginables » de son affaire à M. Grumley. M. Grumley n'est pas d'accord avec cette affirmation et a communiqué directement avec le Conseil de la magistrature à ce propos, indiquant que Mme la juge Nicholas lui avait seulement mentionné que la sœur de Rick Segreto avait comparu devant elle et qu'elle avait été reconnue coupable dans une affaire de fraude de l'aide sociale. M. Grumley a affirmé que toutes les autres assertions faites par Mme Segreto, telles que rapportées dans le Ottawa Citizen, sont fausses.

Mme la juge Nicholas a reconnu qu'elle n'aurait pas dû parler à M. Grumley de l'affaire Segreto et qu'il avait été inapproprié de le faire. Mme la juge Nicholas regrette les répercussions de ses actions sur Mme Segreto et sa famille, notamment le fait d'avoir embarrassé Mme Segreto.

Peu de temps après que la plainte de Mme Segreto ait été déposée auprès du Conseil de la magistrature de l'Ontario le 19 août 2002, le journal Ottawa Citizen a mentionné la plainte dans des articles publiés à la fois dans ses versions imprimée et électronique, donnant tous les détails de l'audience du 29 avril au tribunal et rapportant la conversation avec Thomas Grumley ainsi que la réaction de Mme Segreto à celle-ci.

Le 24 juillet, date du prononcé de la sentence, l'avocat de Mme Segreto a demandé à Mme la juge Nicholas de se retirer en raison de sa conversation avec M. Grumley. Mme la juge Nicholas a immédiatement annulé le plaidoyer de culpabilité et a suggéré que l'affaire soit

aucune communication avec Rick Segreto. Mme la juge Nicholas a alors répondu « En êtes-vous bien certains parce que je ne voudrais pas – je ne vais pas – m'en prendre à votre client; c'est juste une question de principe : si je connais quelqu'un, je le dis ».

Mme Segreto a alors confirmé que sa famille ne parlait pas à son frère et que ce dernier avait causé beaucoup d'angoisse à la famille, qu'il n'était pas inclus dans le testament de son père et qu'il était rejeté par le reste de la famille.

Mme la juge Nicholas a répondu que Rick Segreto était « un bon à rien » et que « en fait, il avait quitté sa femme et ses deux enfants pour la mère de l'un des jeunes, elle même responsable de l'équipe ». Elle a aussi déclaré : « ... en fait, il est parti avec l'une des mères de l'équipe. Je n'étais vraiment pas ravie de cette situation. J'ai sorti ma fille de l'équipe. Je vous dis ceci pour le cas où vous souhaiteriez qu'un autre juge s'occupe de cette affaire... » puis elle a encore déclaré « Je ne pense pas que ce soit un problème mais je veux que vous le sachiez ». [traduction]

Me Guertin a demandé et obtenu l'autorisation de discuter avec sa cliente dans la salle d'audience puis a informé Mme la juge Nicholas que Mme Segreto n'avait pas d'objections.

Mme la juge Nicholas a une fois encore mentionné l'aliménation des biens en indiquant « C'est pour cela que je demande s'il était l'un de ceux qui a aliéné les biens parce que ça ne m'étonnerait vraiment pas de

Mme la juge Nicholas a accepté la plaidoirie de culpabilité de Mme Segreto et a reporté la déclaration de la sentence concernant cette affaire au 24 juillet 2002. Peu de temps après le 29 avril 2002, mais avant la date de la déclaration de la sentence le 24 juillet 2002, alors qu'elle était encore chargée de l'affaire Segreto, Mme la juge Nicholas a parlé de cette affaire avec un certain Thomas Grumley qu'elle a rencontré par hasard dans la rue, directement en face du palais de justice.

Mme la juge Nicholas connaît M. Grumley depuis une dizaine d'années, en tant que voisin et que parent de l'équipe de soccer. Ils demeurent dans le

CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

DANS L'AFFAIRE de la plainte concernant Madame la juge Dianne Nicholas.

DEVANT :

M. le juge R. Roy McMurry, Juge en chef de l'Ontario
M. le juge David Wake, Juge en chef adjoint de la Cour de justice de l'Ontario
Me Julian Porter, c.r.
M. William James

AVOCATS :

Me Douglas C. Hunt, c.r. et Me Michael Meredith, avocat présentant la cause
Me David Scott, c.r., avocat de Mme la juge Nicholas

Le Conseil de la magistrature de l'Ontario (le « Conseil »), conformément au paragraphe 51.4 (18) et à l'article 51.6 de la Loi sur les tribunaux judiciaires, L.R.O. 1990, ch. 43, telle que modifiée, a tenu une audience concernant Mme la juge Dianne Nicholas le 29 juin 2004.

Un énoncé des faits incontestés a été déposé à l'audience qui comprenait des observations conjointes relatives à la nature de la conduite que Mme la juge Nicholas a reconnue et au degré de gravité de cette conduite.

Un mémoire de lettres de soutien de Mme la juge Nicholas a également été déposé.

Les faits incontestés

Les faits se résument comme suit :

La plaignante, Mme Silvana Segreto, a comparu accompagnée de son avocat, Me Ronald Guertin, devant Mme la juge Nicholas à Ottawa, le 29 avril 2002, en rapport avec une allégation de fraude de l'aide sociale.

Mme la juge Nicholas tenait à ce que Mme Segreto et son avocat puissent prendre acte du fait qu'elle connaissait personnellement Rick Segreto, dans le cas où ils souhaiteraient que l'affaire soit portée devant un autre juge.

L'avocat de Mme Segreto a indiqué que c'était « Okay ». Mme Segreto a indiqué que sa famille n'avait

ANNEXE « F »

CONSEIL DE LA MAGISTRATURE DE L'ONTARIO - MOTIFS DE LA DÉCISION

F-1 - F-4

DANS L'AFFAIRE de la plainte concernant
Madame la juge Dianne Nicholas.

F-5 - F-25

DANS L'AFFAIRE des plaintes concernant
M. le juge Kerry R. Evans

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c) En ce qui concerne les affaires impliquant d'anciens collègues, associés ou clients du juge, la ligne de conduite traditionnelle consiste à s'abstenir de les instruire pendant une certaine période. Souvent fixée à deux, trois ou cinq ans, selon les coutumes locales, et de toute façon cette période de « distanciation » se poursuit, à tout le moins, aussi longtemps qu'il existe une dette entre le cabinet et le juge. La ligne directrice a) visant les anciens clients entre également en ligne de compte.

d) En ce qui concerne les affaires impliquant des amis ou des parents qui sont des avocats, il convient de suivre la règle générale en matière de conflits d'intérêts, selon laquelle le juge ne devrait pas siéger dans une affaire si une personne raisonnable, impartiale et bien informée éprouvait une suspicion raisonnable que le juge n'y serait pas impartial.

Des problèmes connexes, qui commandent des solutions semblables à celles ci-dessus, peuvent se poser au juge en exercice à qui l'on propose d'occuper un certain emploi à la cessation de sa charge. Ces propositions peuvent provenir de cabinets d'avocats ou d'employeurs éventuels. Le juge doit agir avec prudence; il est possible qu'une personne raisonnable, impartiale et bien informée examinant l'affaire conclue à une apparence de conflit entre les intérêts du juge et sa fonction. Le juge devrait étudier la proposition à la lumière de ce critère. Il ne doit pas oublier que la conduite des anciens juges peut influencer sur l'image de la magistrature.

E.19 Anciens clients

Les juges devront parfois se demander s'il convient d'entendre des affaires qui impliquent d'anciens clients, des membres de leur ancien cabinet d'avocats ou des avocats du ministère ou du bureau d'aide juridique dans lequel ils ont exercé avant leur nomination. Trois facteurs principaux entrent en jeu. Premièrement, le juge ne doit pas entendre d'affaires dans lesquelles il se trouve réellement en situation de conflit d'intérêts — par exemple, parce qu'il a obtenu des renseignements confidentiels reliés au litige avant d'être nommé juge. Deuxièmement, il faut éviter les situations où une personne raisonnable, impartiale et bien informée éprouverait une suspicion raisonnée que le juge n'est pas impartial. Troisièmement, le juge ne doit pas se récuser inutilement, afin de ne pas alourdir la charge de ses collègues et retarder le fonctionnement des tribunaux.

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Les lignes directrices suivantes ont un caractère général. Elles peuvent s'avérer utiles :

a) Le juge ne devrait pas entendre d'affaires dans lesquelles lui-même ou son ancien cabinet ont agi directement, soit à titre de procureur inscrit au dossier, soit à un autre titre, avant sa nomination.

b) Si le juge a exercé dans l'administration publique ou dans un bureau d'aide juridique, la ligne directrice a) ne peut pas être appliquée rigoureusement. Il serait néanmoins sage de ne pas instruire d'instances engagées par le contentieux ou le ministère concerné pendant que le juge y exerçait.

Au Canada, *A Book for Judges, Le livre du magistrat*⁵⁵ et *Propos sur la conduite des juges*⁵⁶ s'accordent pour dire que, en règle générale, les juges ne doivent pas accepter ce genre de fonction, mais que, si la succession concernée est celle d'un parent ou d'un ami intime et qu'elle semble être simple et non controversée, ils peuvent la régler. Pour le cas où ces conditions ne se réalisent pas, ces ouvrages conseillent tous aux juges de cesser d'occuper la fonction.

En résumé, l'approche conseillée dans ce domaine est la suivante :

1. En règle générale, les juges ne doivent pas agir comme exécuteurs testamentaires ou liquidateurs.

2. Ils ne manquent pas à la déontologie en acceptant cette fonction, si les conditions suivantes sont réunies :

- a) ils agissent sans rémunération;
- b) la succession visée est celle d'un ami intime ou d'un parent;
- c) il y a peu de chances qu'elle soit litigieuse;
- d) l'exécution des obligations de la tâche assumée ne nuira pas à l'exercice de leurs fonctions judiciaires.

3. Le juge qui a accepté la fonction doit cesser de l'exercer si la succession donne lieu à une contestation judiciaire ou si l'administration de la succession préjudicie à l'accomplissement de ses fonctions judiciaires.

⁵⁵ *Live*, à la p. 24.

⁵⁶ *Propos*, aux pp. 41 et 42.

E.18 La fonction d'exécuteur testamentaire

Les opinions les plus diverses ont été énoncées sur la question de savoir si un juge peut remplir les fonctions d'exécuteur testamentaire. Shetreet décrit la pratique anglaise selon laquelle le juge peut remplir cette fonction quand il s'agit de la succession d'amis ou de parents, à la condition qu'il le fasse sans rémunération, qu'il ne participe pas à l'administration courante de la succession et que sa contribution ne nuise pas à l'exercice de ses fonctions judiciaires⁵³. Aux États-Unis, le *Code modèle de l'ABA (1990)* traite de ce point dans ces termes :

[trad.] 4E. Activités fiduciaires

(1) Le juge ne doit pas agir comme exécuteur testamentaire, administrateur ni représentant successoral, à quelque titre que ce soit, et il ne doit pas agir comme fiduciaire, tuteur, fondé de pouvoir ni à quelque autre titre fiduciaire, si ce n'est, selon le cas, pour un membre de sa famille, pour la succession ou la fiducie de celui-ci, et, dans ce genre de situation, à la condition que l'exercice de la fonction visée ne nuise pas à l'accomplissement de ses fonctions judiciaires.

(2) Le juge ne doit pas accepter cette fonction s'il est vraisemblable que, à titre de fiduciaire, il deviendrait impliqué dans des procédures judiciaires qu'il serait normalement appelé à présider, ou si la succession, la fiducie ou le pupille est impliqué dans des procédures contradictoires devant le tribunal auquel le juge appartient ou devant la juridiction d'appel de celui-ci.

(3) Les restrictions relatives aux activités financières qui s'appliquent au juge personnellement s'appliquent aussi au juge dans l'exercice de ses fonctions de fiduciaire⁵⁴.

⁵³ Shetreet, à la p. 331.

⁵⁴ *Code modèle de l'ABA (1990)*, principe 4E.

E.15 Il est préférable que le juge prenne la décision sans chercher à obtenir de consentement. À cette fin, la collaboration du juge en chef ou d'un autre collègue peut être indiquée. Si le juge conclut qu'aucune personne raisonnable, impartiale et bien informée qui aurait étudié la question n'éprouverait une suspicion raisonnable de partialité, il doit procéder à l'audition de la cause. S'il tire la conclusion contraire, il ne doit pas siéger.

E.16 Voici deux situations dans lesquelles les juges devraient consigner leur intérêt au dossier et prier les parties de faire leurs représentations. La première est la situation dans laquelle le juge n'est pas certain qu'il existe un motif de récusation défendable. La seconde situation est celle où une question inattendue est soulevée peu avant le procès ou pendant celui-ci. Les juges qui sollicitent les représentations des parties devraient souligner qu'ils ne recherchent pas leur consentement, mais leur assistance; ils devraient également indiquer qu'ils cherchent à déterminer s'il existe des motifs défendables de récusation et si, dans les circonstances de l'affaire, la doctrine de la nécessité est applicable.

E.17 Nécessité

Des circonstances extraordinaires peuvent commander une dérogation aux divers principes qui précèdent. En vertu du principe de la nécessité, les juges qui devraient autrement se récuser peuvent entendre et décider une instance si l'omission de procéder risque d'entraîner une injustice. Tel pourrait être le cas si la remise ou l'avortement du procès causait des difficultés excessives, ou si aucun autre juge n'était raisonnablement disponible qui ne serait pas lui-même inhabile à siéger⁵².

⁵² Voir, par exemple, *Wilson*, à la p. 29; *Shaman*, aux pp. 99 à 101; *Sheitel*, à la p. 304.

E.12 Dans la partie suivante, on examinera si le consentement des parties est essentiel à l'habilitation du juge à entendre la cause dans certaines circonstances. Toutefois, les questions de la divulgation et du consentement ne sont pas nécessairement liées. Pour l'instant, on peut conclure que les juges doivent consigner au dossier tout intérêt susceptible de fonder, de manière plausible, la prétention selon laquelle il doit y avoir récusation.

E.13 Consentement des parties

Dans *Propos sur la conduite des juges*, on reconnaît la difficulté pratique qu'il y a à tenter d'écarter un motif de récusation en divulguant les éléments compromettants aux parties, pour obtenir leur consentement à leur sujet. La principale préoccupation évoquée est le fait que cette façon de procéder pose un dilemme à l'avocat : comme l'a dit un répondant, où bien il accepte, ou bien il risque de passer pour un trouble-fête⁵⁰.

E.14 Il n'est pas suggéré que le consentement des parties justifie le juge de siéger dans une situation où il estimerait convenable de se récuser. Le consentement ne peut intervenir que si, au bout du compte, le juge en vient à la conclusion suivante : un motif possible de récusation pourrait être soulevé mais la situation ne justifie pas une crainte de partialité de la part d'une personne raisonnable. Cette approche peut cependant mettre en lumière le caractère délicat de la situation de l'avocat. En effet, en révélant le motif de récusation et en demandant l'accord des parties pour procéder à l'audition de la cause, le juge dit essentiellement qu'aucune personne raisonnable ne devrait éprouver une crainte de partialité. Par conséquent, si l'avocat refuse, la position qu'il (ou que son client) a adoptée peut paraître déraisonnable. Un élément de solution peut être apporté à ce dilemme par une certaine pratique anglaise; selon celle-ci, le juge se voit dire qu'une opposition a été faite mais il n'apprend pas par quelle partie elle l'a été⁵¹.

⁵⁰ *Propos*, à la p. 82.

⁵¹ Voir *Shetree*, à la p. 305.

de la cour. Les circonstances qui pourraient n'entraîner que de très légers inconvénients pour une juridiction importante risquent d'avoir de grandes répercussions pour un tribunal de moindre envergure. Encore une fois, cependant, il semble irréaliste et peu judicieux d'essayer de régler tous les cas possibles, autrement que par l'application du principe général énoncé ci-dessus : lorsqu'une personne raisonnable, impartiale et bien informée, éprouverait une suspicion raisonnée de partialité du juge, celui-ci ne doit pas siéger. Dans certains cas, les principes en matière de diligence peuvent aussi être pertinents. Ainsi, ils entrent en jeu lorsque les conflits du juge sont tels qu'ils l'empêchent effectivement d'exercer ses fonctions. La faillite des juges est susceptible de soulever un grand nombre de ces questions et de leur conférer beaucoup d'urgence. Si un juge se rend compte que sa situation financière, ou d'autres questions du même type, risquent d'entacher son image d'impartialité, il fait bien de saisir son juge en chef du problème.

E.11 Divuligation

Il est vrai qu'il n'existe pas d'obligation légale générale de divulgation des renseignements d'ordre financier au Canada; toutefois, ce silence ne règle pas la question de savoir si, en vertu des principes de la déontologie, les juges doivent révéler aux parties un intérêt ou un facteur que d'autres considéreraient comme porteur d'un conflit d'intérêts potentiel. La position anglaise et australienne semble être que les juges doivent révéler tout intérêt ou facteur qui pourrait indiquer la nécessité de la récusation⁴⁹. Cette approche repose, toutefois, sur l'idée que les juges divulguent les éléments compromettants afin d'obtenir le consentement des parties à ce qu'ils président les procès.

⁴⁹ Voir, par exemple, *Shetreet*, à la p. 305; *Thomas*, aux pp. 53 à 55; *Propos*, à la p. 80; *Wilson*, aux pp. 30 et 31.

E.8 Bien que de telles dispositions tranchent la question avec netteté et soient fort bienvenues, elles risquent de nous faire oublier le principe général que les juges (sous réserve des considérations examinées au paragraphe E.17 ci-après) doivent se récuser s'ils ont connaissance d'un intérêt ou d'une relation qui, dans l'esprit d'une personne raisonnable, impartiale et bien informée, donnerait lieu à une suspicion raisonnable de partialité. Pour les besoins des principes nationaux de déontologie judiciaire applicables au Canada, il convient d'éviter toute tentation de préciser davantage.

E.9 L'insolvabilité et la faillite peuvent soulever toutes sortes de difficultés pour des juges. Nous n'avons pas à nous demander si ces difficultés constituent des motifs de récusation et, dans l'affirmative dans quels cas elles en constituent. Comme le démontre l'article 175 de la Loi sur la faillite, une faillite peut découler d'un malheur, sans qu'il n'y ait mauvaise conduite. Ainsi, un juge pourrait être tenu responsable du détournement de fonds commis par un ancien associé ou d'un accident dans lequel le véhicule du juge se trouvait conduit par son conjoint ou son enfant. Compte tenu de ce fait, aucune règle générale ne peut ou ne doit être formulée.

E.10 Les juges qui éprouvent des difficultés financières doivent prendre particulièrement garde aux conflits d'intérêts, tant réels qu'apparents. Des difficultés surgiront s'ils président des procès dont l'objet concerne l'un ou l'autre de leurs créanciers ou qui soulèvent des questions de même nature que celles auxquelles ils sont confrontés. De graves questions se poseront si un aspect ou un autre des difficultés financières du juge devient litigieux. En pareil cas, il est possible que le juge compare devant un collègue à titre de partie ou de témoin. Il est difficile de systématiser les conséquences réelles des difficultés financières des juges sur leur capacité d'accomplir quotidiennement leur tâche; ces conséquences varient selon les circonstances et selon la taille

pécuniaire peu important, tel celui visé dans les dispositions de minimis du *Code modèle de l'ABA* (1990), ne saurait donner lieu à un doute raisonnable quant à l'impartialité du juge⁴⁷. Toutefois, si l'intérêt est plus important, le juge ne doit pas siéger, sous réserve des considérations de nécessité étudiées au paragraphe E.17.

E.7 Les intérêts des membres de la famille du juge, de ses amis intimes ou de ses associés sont-ils réputés donner lieu à un conflit d'intérêts apparent ? Sur le plan des principes généraux, il est possible d'imaginer des situations où des membres de la famille, des amis intimes ou des associés du juge détiennent des intérêts dans l'objet d'un procès qu'il préside et où ces intérêts donnent lieu à une crainte raisonnable de conflit entre les intérêts du juge et ses fonctions. Toutefois, il est beaucoup plus difficile de cerner ces cas de façon plus précise. Les paragraphes 234(1) et (9) du *Code de procédure civile* précisent le degré de parenté, avec les parties ou avec les avocats, à partir duquel la récusation est obligatoire. Aux termes de l'article 235, le juge peut être récusé si lui-même ou « son conjoint » sont intéressés dans le procès. Le *Code modèle de l'ABA* (1990) définit également le degré de parenté qui devrait entraîner la récusation⁴⁸.

⁴⁷ Voir la note 28; la règle de *minimis* vise tout « [trad.] intérêt insignifiant qui n'est pas susceptible de jeter un doute raisonnable sur l'impartialité du juge ».

⁴⁸ Voir, par exemple, le principe 3Ed) :

[trad.]

d) le juge ou le conjoint du juge, ou une personne parente, jusqu'au troisième degré, de l'un d'eux, ou le conjoint d'une telle personne, selon le cas :

(i) est une partie au litige, ou un dirigeant, administrateur ou fiduciaire d'une partie;

(ii) agit comme avocat dans le litige;

(iii) à la connaissance du juge, a un intérêt autre que de minimis qui pourrait être sensiblement affecté par l'issue du litige;

(iv) à la connaissance du juge, sera vraisemblablement un témoin important dans le litige.

« troisième degré » Les personnes qui suivent sont des parents au troisième degré : les arrière-grands-parents, les grands-parents, les parents, les oncles, les tantes, les frères, les sœurs, les enfants, les petits-enfants, les arrière-petits-enfants, les neveux et les nièces.

une partie, un avocat ou un témoin; ou l'expression, par le juge, d'opinions manifestant de la partialité à l'égard d'une partie⁴⁴.

E.4 Le Code de procédure civile du Québec est la seule source législative qui fasse autorité en la matière au Canada. La question de la récusation y est traitée expressément aux articles 234 et 235. Parmi les motifs de récusation, on y relève, par exemple, le lien de parenté avec l'une des parties, jusqu'au degré de cousin germain, le fait d'avoir agi comme avocat pour l'une des parties, le fait d'être intéressé dans le litige, etc.⁴⁵

E.5 Comme c'est le cas pour d'autres aspects de cette question, il faut s'attarder à la perception raisonnable autant qu'au conflit d'intérêts réel. De manière générale, les juges ne doivent pas présider de procès qui mettent en jeu leur propre intérêt pécuniaire ou leur droit de propriété ou dans lesquels leur intérêt donnerait lieu, aux yeux d'une personne raisonnable, impartiale et bien informée, à une suspicion raisonnée de partialité⁴⁶. Cette règle générale s'applique aussi bien dans le cas où l'intérêt lui-même est l'objet du litige que dans le cas où l'issue du procès a une incidence importante sur la valeur de tout intérêt ou bien appartenant au juge, à sa famille ou à des proches. Cette règle n'est pas applicable au cas où l'intérêt du juge se limite à un intérêt commun à tous les citoyens.

E.6 Cette règle est exprimée en termes généraux et elle ne peut pas être appliquée strictement. Le fait d'être titulaire d'une police d'assurance, d'avoir un compte en banque, de détenir une carte de crédit émise par une institution financière ou des actions d'une société par actions sous forme de parts de fonds mutuels ne susciterait pas en temps normal de conflit d'intérêts, réel ou apparent, sauf si l'issue de l'instance dont le juge est saisi pouvait avoir une incidence importante sur ce bien. De même, l'intérêt

⁴⁴ *Wilson*, à la p. 23.

⁴⁵ *Code de procédure civile*, art. 234 et 235.

⁴⁶ *Shaman*, à la p. 136; la formulation s'inspire des observations du juge Rand dans *Szilard c. Szasz*, [1965] R.C.S. 3, à la p. 4.

E. Conflits d'intérêts

E.1 Les juges doivent organiser leurs affaires personnelles et leurs entreprises financières de façon à réduire au minimum les possibilités de conflit entre ces affaires et entreprises et leurs fonctions judiciaires. Malgré toutes leurs précautions, ils se trouveront dans des situations qui les obligeront à se récuser afin d'éviter de donner l'apparence de la partialité. La présente partie porte sur les questions suivantes : (1) Qu'est-ce qui constitue un conflit d'intérêts ? (2) Dans quels cas les juges doivent-ils divulguer les circonstances susceptibles de donner lieu à un tel conflit ? (3) Dans quels cas le consentement des parties dispense-t-il les juges de se récuser ? (4) Dans quels cas sera-t-il nécessaire que les juges président les procédures malgré l'apparence d'un conflit d'intérêts ? Nous étudierons ces points successivement.

E.2 Qu'est-ce qui constitue un conflit d'intérêts ?

Comme l'a écrit Perell, « [trad.] un thème commun ou unificateur des diverses catégories de conflits d'intérêts est celui de la division des allégeances et des devoirs⁴³ ». Il y a risque de conflit d'intérêts lorsque l'intérêt personnel du juge (ou de ses proches) s'oppose à son devoir de rendre la justice avec impartialité. L'impartialité s'entend à la fois de l'impartialité réelle et de l'impartialité apparente, selon le point de vue d'une personne raisonnable, impartiale et bien informée. En ce qui concerne la fonction judiciaire, le critère applicable aux conflits d'intérêts doit couvrir non seulement les conflits réels entre l'intérêt personnel du juge et le devoir d'exercer la justice de manière impartiale, mais encore les situations dans lesquelles une personne raisonnable, impartiale et bien informée éprouverait une crainte raisonnable de conflit d'intérêts.

E.3 Un certain nombre de textes et de commentaires peuvent guider les juges sur cette question. Dans *A Book for Judges*, par exemple, M. le juge J. O. Wilson inscrit au nombre des motifs de récusation un intérêt pécuniaire dans l'issue du procès; une relation de parenté, une amitié intime ou une relation professionnelle avec

⁴³ Paul M. Perrell, *Conflicts of Interest in the Legal Profession*, 1995, à la p. 5.

un avis informel sur la constitutionnalité du texte⁴¹. Lorsque des juges forment des commentaires relativement à un projet de loi, ou à d'autres questions de politique gouvernementale, ils y traitent normalement de sujets d'ordre pratique ou de rédaction législative, en évitant les sujets politiques controversés. En général, ces commentaires devraient s'inscrire dans un effort collectif ou institutionnel de la magistrature, plutôt que de faire valoir le point de vue d'un seul juge.

D.8 Le principe D.3(e) déconseille aux juges de signer des pétitions visant à influencer des décisions politiques. Les pétitions offrent un exemple de situation dans laquelle les juges peuvent donner l'impression de soutenir tel ou tel point de vue ou de participer, quoique passivement, à des pressions en vue d'obtenir du changement. Ainsi que l'a fait observer le Conseil de la magistrature de la Nouvelle-Écosse, l'impératif de se tenir à l'écart de toute activité politique implique qu'« [trad.] un juge ne doit pas chercher à influencer des politiques ou intervenir relativement à des enjeux politiques⁴² ». Or tel est justement le but des pétitions.

D.9 Les fonctions des juges en chef et, dans certains cas, des autres juges qui ont des responsabilités administratives, commandent des contacts et une interaction avec les autorités gouvernementales ou administratives, en particulier les procureurs généraux, les sous-procureurs généraux et les dirigeants des services judiciaires. Cet état de choses est nécessaire et légitime, à condition que les situations dans lesquelles ont lieu ces interactions ne soient pas marquées par la partialité et que les sujets de discussion se limitent à l'administration de la justice et de l'appareil judiciaire, sans se rattacher à certaines affaires en particulier. Les juges, y compris les juges en chef, doivent éviter d'être perçus comme des conseillers du pouvoir législatif ou exécutif.

⁴¹ Le Conseil canadien de la magistrature a, par exemple, chargé un comité spécial d'examiner des propositions visant à instituer de nouvelles dispositions générales du *Code criminel*. Le Conseil a également facilité la tenue de rencontres entre des hauts fonctionnaires et des juges pour discuter des lignes directrices sur les pensions alimentaires pour enfants.

⁴² *Décision Niedermeyer*, à la p. 12.

⁴⁰ *Code modèle de l'ABA (1990)*, commentaire du principe 4B.

protéger l'indépendance de la magistrature, les possibilités d'interventions hors cour pourraient être plus étendues dans certaines circonstances. Quand leur mandat l'exige, les juges siègent à des commissions d'enquête ont plus de latitude pour commenter les questions politiques pertinentes à l'enquête, mais ils doivent continuellement garder à l'esprit qu'ils sont des juges même s'ils agissent temporairement à titre de commissaires.

D.7 Rien dans les présents principes n'interdit ni ne décourage la participation des juges à des travaux de réforme du droit et à d'autres activités savantes ou éducatives dénuées de partisanerie politique, qui visent le perfectionnement du droit et de l'administration de la justice. Les juges détachés auprès de commissions de réforme du droit ont beaucoup plus de latitude à l'égard des questions soumises à une commission. Le Commentaire du *Code modèle de l'ABA (1990)* note que, « [trad.] en leur qualité de magistrats et de juristes, les juges sont éminemment qualifiés pour contribuer au perfectionnement du droit, de l'appareil judiciaire et de l'administration de la justice [...] Ils peuvent participer aux efforts visant à promouvoir l'équité dans l'administration de la justice, l'indépendance de l'autorité judiciaire et l'intégrité de la profession juridique⁴⁰ ». Il faut cependant éviter que, à l'occasion de ces activités, les juges ne donnent l'impression de participer aux « déviances » d'un groupe de pression auprès du gouvernement ou de dire quel serait leur jugement si telle ou telle question leur était soumise. Evidemment, il est toujours loisible aux juges de faire valoir des représentations auprès du gouvernement concernant l'indépendance de la magistrature ou, en utilisant des mécanismes appropriés, concernant les traitements et les avantages sociaux. La formulation d'observations juridiques, faite dans un cadre convenable, à des fins pédagogiques ou pour signaler les insuffisances de la loi, n'est nullement déconseillée. Par exemple, dans des circonstances spéciales, des commentaires sur un projet de loi pourraient être utiles et bienvenus, pourvu que les juges se gardent de donner une interprétation informelle du projet ou

participation aux débats publics qui convient aux juges. La première consiste à savoir si la participation du juge pourrait raisonnablement saper la confiance en son impartialité, et la deuxième, si cette participation serait susceptible d'exposer inutilement le juge aux attaques politiques, ou serait autrement incompatible avec la dignité de la fonction judiciaire. Dans l'affirmative, le juge devrait s'abstenir de participer au débat.

D.6 Le principe D.3d) reconnaît que, nonobstant le devoir général de retenue, il y a des cas où un juge peut exprimer publiquement son avis sur un sujet politique controversé; il s'agit des cas où le sujet du débat concerne directement le fonctionnement des tribunaux, l'indépendance de la magistrature — ce qui s'entend également des débats sur les traitements et avantages sociaux des juges —, des aspects fondamentaux de l'administration de la justice, ou l'intégrité personnelle du juge. Mais même dans ces cas, les juges doivent exercer une grande retenue. Les juges doivent se rappeler que les opinions qu'ils expriment en public peuvent être interprétées comme celles de la magistrature; il est difficile pour un juge d'exprimer des opinions qui seront interprétées comme les siennes propres plutôt que celles de la magistrature en général. Il y a habituellement d'autres moyens d'intervention que la participation aux débats publics. Par exemple, le juge en chef de la juridiction concernée pourrait s'adresser officiellement à l'autorité ou aux autorités compétentes. Mises à part leurs fonctions prévues par la loi ou la Constitution, et mises à part les questions touchant le fonctionnement de leur juridiction respectue ou l'administration de la justice, les juges en chef se trouvent dans la même situation que leurs collègues. Ce principe définit une sphère d'intervention plus grande que celle délimitée en 1982 par le Conseil canadien de la magistrature dans l'affaire *Berger* où, se prononçant sur la plainte, le Conseil a conclu que les juges ne devaient pas exprimer leur opinion dans les controverses politiques qui ne touchaient pas directement le fonctionnement des tribunaux. Ce que signifie le présent principe, c'est que, compte tenu de la connaissance et de l'expérience qu'ont les juges des questions relatives à l'administration de la justice, et compte tenu de l'obligation qui leur incombe de

D.4 Le principe D.3c) met en garde contre les contributions aux partis politiques. La justification de cette règle est que les juges ne doivent pas être identifiés au processus politique ou, sous réserve du principe D.3d), à une position arrêtée sur des sujets politiques controversés. Le Conseil de la magistrature de la Nouvelle-Écosse a été saisi d'une plainte qui reprochait à un juge d'avoir contribué au fonds établi par un parti politique pour alléger les difficultés financières de son ancien chef, qui était un ami et ancien camarade de classe. Celui-ci avait également contribué aux campagnes électorales de proches parents, et fait trois autres contributions, sans affectation particulière, au même parti politique. Le Conseil de la magistrature de la Nouvelle-Écosse l'a mis en garde comme suit :

[trad.] Nous pensons que, aux yeux du public, lorsqu'un juge fait une contribution financière au profit de politiciens connus, comme les trois qui ont bénéficié de ses dons, il est impossible de distinguer ces politiciens des organisations politiques dont ils font partie [...] Étant donné qu'à notre avis, les dons d'argent constituent un mode, parmi d'autres, de participation à une organisation politique, ces dons sont mis au rang des activités politiques qui sont interdites aux juges³⁹.

D.5 L'application du principe D.3d), qui conseille d'éviter de prendre part aux controverses politiques, est plus susceptible d'être débattue, et suscite plus de problèmes, que les autres principes figurant dans le présent chapitre. Les juges n'abandonnent pas, du seul fait de leur nomination, tous les droits à la liberté d'expression dont jouissent les autres Canadiens. Cependant, leurs fonctions imposent certaines restrictions, que justifie le maintien de la confiance du public en l'impartialité et en l'indépendance de la magistrature. Deux questions fondamentales entrent en ligne de compte pour qui cherche à déterminer le niveau de

³⁹ Conseil de la magistrature de la Nouvelle-Écosse, *Report Concerning the Conduct of His Honour Paul S. Niedermeier*, 17 juin 1991, (ci-après « *Décision Niedermeier* »).

D.2 Les commentateurs sont unanimes à dire que « toutes les

activités et relations politiques de nature partisane doivent cesser totalement et sans aucune équivoque dès l'entrée en fonction³⁶ ». Deux considérations soutiennent cette règle. L'impartialité, réelle et apparente, est une condition *sine qua non* de l'exercice de la fonction judiciaire. Elle est compromise si les juges se livrent à des activités politiques ou tiennent des propos hors cour sur des questions publiques controversées. En outre, de tels propos ou activités risquent fort de créer de la confusion dans le public

en ce qui concerne les rapports entre le pouvoir judiciaire, d'une part, et les pouvoirs exécutif et législatif, d'autre part. Par définition, les activités et déclarations partisans d'un juge impliquent une prise de position publique à l'égard d'une question particulière. La perception de partialité sera renforcée si, comme cela est presque toujours inévitable, les activités aux-
quelles s'adonne le juge font l'objet de critiques ou de contestations. Ces réactions, à leur tour, rendront à compromettre l'indépendance

de la magistrature³⁷. Bref, les juges qui utilisent leur fonction judiciaire comme tremplin pour l'arène politique mettent en péril la confiance du public en l'impartialité et en l'indépendance de la magistrature.

D.3 Les principes D.3a) et b) illustrent des cas reconnus d'activités hors cour dont les juges doivent se garder après leur nomination³⁸. Les juges doivent également se demander si le simple fait d'assister à certaines réunions publiques pourrait donner l'impression d'un engagement politique continu ou pourrait susciter une crainte raisonnable de partialité à l'égard d'une question susceptible d'être soumise aux tribunaux.

³⁶ *Popos*, à la p. 11; voir aussi *Livre*, à la p. 28; *Shaman*, aux pp. 360 et suivantes; *Wilson*, à la p. 7. Au Canada (de même qu'aux E.-U. et en Angleterre), les juges ont le droit de vote et cela ne pose aucun problème déontologique.

³⁷ *Russell*, aux pp. 87 et 88.

³⁸ Voir aussi *Wilson*, aux pp. 7 à 9; *Thomas*, à la p. 156.

Dans les *Propos sur la conduite des juges*, on s'est dit d'avis que les juges pouvaient aider les comités consultatifs sur la nomination des juges de manière strictement confidentielle. De façon plus générale, le commentaire du *Code modèle de l'ABA (1990)* traite de ce point dans ces termes :

[trad.] Bien que le juge doive prendre garde que l'on ne tire avantage du prestige de sa fonction, il peut fournir une lettre ou une recommandation fondée sur sa connaissance personnelle. Il peut aussi permettre que son nom soit mentionné dans les références d'une personne, et répondre à une demande de recommandation personnelle adressée par un comité de sélection, tel le comité de sélection d'un employeur éventuel, un comité de nomination des juges ou le bureau d'admission d'une faculté de droit³⁵.

Une fois de plus, le critère à deux volets proposé à l'égard des références favorise généralement l'équilibre qui convient dans le contexte particulier des nominations à la magistrature, encore que le résultat constitue une approche un peu plus restrictive que celle préconisée dans le *Code modèle de l'ABA (1990)*.

D. Activités politiques

D.1 La présente partie porte sur les activités hors cour des juges. Il vise, de façon particulière, leurs activités, de nature politique ou autre, qui, du point de vue d'une personne raisonnable, impartiale et bien informée, pourrait miner l'impartialité du juge relative-ment à des questions susceptibles d'être soumises aux tribunaux. L'adhésion à certains groupes ou à certaines organisations, et la participation à des controverses publiques peuvent être de ce nombre.

³⁵ *Code modèle de l'ABA (1990)*, commentaire du principe 2B.

C.10 Les demandes de lettres de recommandation peuvent poser des difficultés à un juge. Il y a certainement des facteurs à considérer avant d'accepter de fournir une telle lettre. Le juge doit se garder de donner l'impression qu'il utilise le prestige de sa fonction pour promouvoir les intérêts privés d'un tiers, ou de donner l'impression que certaines personnes jouissent auprès de lui d'une influence ou de faveurs particulières. Combinés, ces facteurs indiquent que le juge ne doit donner une recommandation que si les conditions suivantes sont clairement remplies : premièrement, l'on fait appel à sa connaissance de la personne concernée et l'on ne veut pas uniquement exploiter son prestige de juge; deuxièmement, le juge a des choses importantes à dire sur la personne visée, de telle sorte qu'un refus de sa part ne serait pas équitable envers cette personne et appauvrirait injustement le processus de sélection.

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Selon les *Propos sur la conduite des juges*, la grande majorité des juges qui ont répondu au questionnaire ayant servi à la préparation de l'ouvrage ont approuvé les recommandations de réputation par les juges; d'autre part, ce document fait remarquer que la pratique des juges est variable en cette matière et que de nombreux répondants ont exprimé une certaine réticence³⁴. Quoique les avis des juges divergent sur ce point, le critère à deux volets énoncé au paragraphe précédent se veut une approche qui favorise un équilibre acceptable entre l'utilité de tirer profit de l'opinion des juges et la nécessité de réduire au minimum le risque de miner leur neutralité.

³⁴ *Propos*, aux pp. 38 à 41.

C.8 Qu'en est-il de la participation bénévoles aux conseils d'organismes à caractère philanthropique, charitable, religieux ou éducatif? Accepter un tel poste comporte des risques. Nombre d'organismes demandent des subventions à l'État ou en reçoivent de celui-ci. Sauf en ce qui a trait aux fonds nécessaires à la bonne administration de la justice, il est contraire à l'éthique de participer directement à la demande de crédits publics. Le conseil d'administration est responsable des actes de l'organisme. Celui-ci peut avoir des différends avec son personnel ou avec des tiers, interdire des actions en justice ou être poursuivi, enfreindre les règlements d'application de toutes sortes de lois ou être mêlé à des situations qui soulèvent une controverse publique. Chacune de ces situations risque d'être embarrassante pour le juge ou pour ses collègues; chacune pourrait susciter une crainte raisonnable de partialité quant à certaines questions susceptibles d'être soumises à l'appréciation des tribunaux. Les autres administrateurs peuvent solliciter des conseils du juge sur certaines questions juridiques. Mais le juge enfreint l'éthique s'il donne de tels conseils. Avant d'accepter un poste d'administrateur, le juge doit peser avec soin les risques inhérents à la situation concernée.

C.9 De nombreux juges canadiens ont occupé le poste de président d'une université ou de chancelier d'un diocèse. D'autres ont siégé au conseil d'administration d'écoles, d'hôpitaux ou de fondations de bienfaisance. Une telle participation peut aujourd'hui présenter des risques qui, autrefois, ne ressortaient pas à l'évidence. Il y a lieu de bien peser ces risques. Les universités, les églises, les organismes de bienfaisance et les associations philanthropiques sont maintenant parties à des litiges et mêlées à des controverses publiques d'une façon ou d'une autre; et plusieurs types de situations rencontrées étaient pratiquement inconnus jusqu'à tout récemment. Le juge qui est président d'une université, chancelier d'un diocèse ou membre d'un conseil d'administration pourrait se retrouver dans une position délicate si l'organisme était mêlé à un litige ou à une controverse publique.

(3) Les juges ne doivent pas donner de conseils de placements à ce genre d'organisme, mais ils peuvent faire partie du conseil d'administration ou du conseil de surveillance de celui-ci, même si ce conseil est chargé de l'approbation des décisions en matière de placements.

C.5 Ces dispositions visent à établir un équilibre raisonnable entre l'engagement social et la préservation de l'impartialité judiciaire et, quoiqu'elles ne soient pas reprises expressément dans les présents principes, elles peuvent se révéler utiles.

C.6 Sous réserve des considérations qui suivent, les juges sont libres d'adhérer à des organisations civiles ou charitables et d'y occuper des postes d'administrateur et, bien entendu, de pratiquer la religion de leur choix. En règle générale, toutefois, les juges ne doivent pas permettre que le prestige de la fonction judiciaire soit engagé dans la collecte de fonds pour des causes particulières, si méritoires soient-elles. Suivant ce principe, les juges (sauf pour les démarches auprès des collègues) ne devraient pas faire de collecte de dons personnellement ni associer leur nom à des campagnes. Dans *Propos sur la conduite des juges*, il est dit que, lorsqu'un juge participe directement à la collecte de fonds, les avocats et les justiciables sollicités peuvent être tentés de faire un don pour attirer la faveur du juge. De plus, le juge est, par le fait même, publiquement identifié avec les objectifs de l'organisme concerné³². N'est toutefois pas incorrecte la seule mention du nom du juge, à titre d'administrateur (ou à un titre semblable), sur le papier à en-tête général de l'organisme.

C.7 Les juges doivent étudier avec circonspection toute offre de siéger au conseil d'administration d'organismes, si ce n'est de ceux qui s'occupent de la formation des juges ou de questions professionnelles les concernant. Il est contraire à l'éthique (et interdit) de participer au conseil d'administration d'entreprises commerciales³³.

³² *Propos*, à la p. 21.

³³ *Loi sur les juges*, L.R.C. (1985), ch. J-1, art. 55. (Voir note 12.)

C.4 Bien qu'il ne convienne pas en tout point à la magistrature canadienne, le *Code of Conduct for United States Judges*, qui est applicable aux juges nommés par le gouvernement fédéral des États-Unis, offre un point de départ utile :

[trad.] *Activités civiles et charitables*. Les juges peuvent participer à des activités civiles et à des activités charitables qui ne compromettent pas leur impartialité et ne nuisent pas à l'exécution de leurs fonctions judiciaires. Ils peuvent remplir la fonction de dirigeant, d'administrateur, de fiduciaire ou de conseiller, autre que juridique, de tout organisme à caractère éducatif, religieux, charitable, fraternel ou civique dont l'objet n'est pas le profit économique ou politique de ses membres; cependant ils doivent respecter les restrictions suivantes :

(1) Les juges ne doivent pas remplir ce genre de fonction si l'organisme devait vraisemblablement être impliqué dans des procédures qui relèvent normalement de leur compétence, ou si l'organisme devait régulièrement être impliqué dans des procédures contradictoires devant un tribunal, quel qu'il soit.

(2) Les juges ne doivent pas collecter de fonds pour quelque organisme à caractère éducatif, religieux, charitable, fraternel ou civique, ni utiliser ou permettre que soit utilisé le prestige de la fonction judiciaire à cette fin, mais leur nom peut figurer sur la liste des dirigeants, administrateurs et fiduciaires de ce genre d'organisme. Les juges ne doivent pas participer personnellement au recrutement de membres si cette démarche peut raisonnablement être perçue comme coercitive ou si elle est essentiellement un moyen de collecter des fonds.

C. Activités civiles ou charitables

C.1 Les juges sont nommés pour servir la population. Nombre de personnes qui ont accédé à la magistrature avaient joué un rôle social actif et souhaitaient continuer de le faire. La société comme les juges tirent profit de telles activités, mais celles-ci comportent certains risques. Il importe donc d'étudier les limites que la charge de juge impose aux activités à caractère social.

C.2 Les juges appliquent la loi au nom de la société; par conséquent, tout isolément excessif est peu propice à des décisions justes et judiciaires. M. le juge Gérard Fautoux exprime cette idée avec concision et clouage dans *Le livre du magistrat*³¹ :

On ne peut, cependant, voir [...] une intention [...] d'établir le magistrat dans une tour d'ivoire, de l'obliger à rompre tout rapport avec les organisations qui sont au service de la société. On n'attend certes pas du juge qu'il vive en marge de la collectivité sociale dont il est une entité importante. Le bon fonctionnement même du pouvoir judiciaire s'y oppose et exige précisément une attitude contraire.

C.3 Les contraintes précises auxquelles doit être assujettie la conduite des juges en ce qui a trait aux activités civiles et charitables suscitent la controverse tant au sein de la magistrature que dans la société. Cela n'a rien d'étonnant puisqu'il s'agit d'équilibrer des intérêts opposés. D'une part, l'activité sociale des juges est avantageuse tant pour la société que pour la magistrature. Ces avantages doivent être appréciés en fonction des attentes et de la situation particulière de chaque communauté. D'autre part, le rôle actif des juges peut parfois compromettre leur image d'impartialité ou entraîner un nombre excessif de récusations. Si tel risque d'être le cas, le juge doit (sauf si le principe de la nécessité, exposé au paragraphe E.17, est en cause) s'abstenir d'exercer l'activité compromettante.

³¹ *Livre*, à la p. 17.

aucun problème, elle n'a pas droit à un traitement différent ou particulier. De plus, comme nous le verrons plus loin, les juges doivent assurer que les débats sont menés de manière ordonnée et efficace; en conséquence, une certaine fermeté peut s'imposer. Il est utile d'examiner la question de l'impartialité plus concrètement sous certains aspects précis.

B. Comportement des juges

B.1 Les parties au litige, ainsi que d'autres personnes, surveillent les actions des juges pour y trouver des indications d'injustice. Les remontrances injustifiées faites aux avocats, les remarques vexantes et déplacées au sujet des parties et des témoins, les déclarations manifestant un parti pris et un comportement immodéré et impatient peuvent saper l'apparence d'impartialité. D'autre part, les juges doivent veiller à ce que les débats se déroulent de manière ordonnée et efficace, et à ce qu'on n'abuse pas du processus. Il faut faire preuve d'une fermeté suffisante à cette fin. Les juges doivent maintenir un équilibre délicat : ils doivent diriger la procédure avec efficacité, sans donner l'impression de manquer de partialité à une personne raisonnable, impartiale et bien informée. Ces questions sont étudiées plus en détail aux chapitres intitulés « Diligence » et « Égalité ». Le point suivant vaut toutefois d'être répété : il convient d'éviter tout acte qui pourrait, aux yeux d'une personne raisonnable, impartiale et bien informée, donner lieu à une suspicion raisonnable de partialité. Lorsqu'une telle impression est donnée, ses effets néfastes ne se limitent pas aux parties au litige; cette perception sape la confiance du public en la magistrature en général³⁰.

³⁰ Voir le chapitre 4, intitulé « Diligence », et le chapitre 5, intitulé « Égalité ».

A.4 « La véritable impartialité n'exige pas que le juge n'ait ni

sympathie ni opinion. Elle exige que le juge soit libre d'accueillir et d'utiliser différents points de vue en gardant un esprit ouvert²⁷ ». Les juges ont l'obligation fondamentale de s'efforcer d'être et de paraître aussi impartiaux que possible. Il ne s'agit pas d'un idéal irréaliste. Cette façon de voir souligne plutôt le caractère fondamental de l'obligation d'impartialité, obligation qui implique le devoir de réduire au minimum la crainte raisonnable de partialité.

A.5 Toute perception raisonnable de partialité d'un juge fait du tort aux autres juges, à l'ensemble de la magistrature, ainsi qu'à la bonne administration de la justice. Les juges doivent donc éviter de s'exprimer ou de se comporter sciemment, dans la cour ou à l'extérieur de la cour, de manière à donner l'impression, à une personne raisonnable, qu'ils ne sont pas impartiaux²⁸. Différents éléments peuvent entacher l'image d'impartialité des juges. Ces éléments vont de leurs associations ou de leurs intérêts d'affaires jusqu'à des remarques que les juges croient « plaisantes et inoffensives²⁹ ».

A.6 Les attentes des parties peuvent être très élevées. D'aucuns sont prompts à percevoir, sans motif valable, un préjugé quand une décision leur est défavorable. Il faut donc mettre tous ses efforts à éviter, ou à réduire au minimum, tout ce qui pourrait constituer un motif raisonnable de tirer pareille conclusion. Par ailleurs, les juges ont l'obligation de traiter toutes les parties avec équité et sur un pied d'égalité; si une partie voit un préjugé là où aucune personne raisonnable, impartiale et bien informée ne voit

²⁷ Dans *R. D. S. c. La Reine*, précité, à la p. 504, les juges L'Heureux-Dubé et McLachlin (les juges Gonthier et LaForest souscrivant à leur opinion) ont cité à l'appui de leur opinion ce passage, tiré de la page 15 des *Propos*.

²⁸ American Bar Association, *Model Code of Judicial Conduct* (1990) (ci-après « Code modèle de l'ABA (1990) »), commentaire du principe 3B.

²⁹ *Rapport annuel 1992-1993* du Conseil canadien de la magistrature, à la p. 16.

Le juge en chef Lamer s'exprime en ces termes dans *R. c. Lippe* :

La garantie d'indépendance judiciaire vise dans l'ensemble à assurer une perception raisonnable d'impartialité; l'indépendance judiciaire n'est qu'un « moyen » pour atteindre cette « fin ». Si les juges pouvaient être perçus comme « impartiaux » sans l'« indépendance » judiciaire, l'exigence d'« indépendance » serait inutile. Cependant, l'indépendance judiciaire est essentielle à la perception d'impartialité qu'a le public. L'indépendance est la pierre angulaire, une condition préalable nécessaire, de l'impartialité judiciaire²⁵.

A.3 L'impartialité s'entend non seulement de l'absence apparente, mais, chose encore plus fondamentalement, de l'absence réelle, de préjugé et de parti pris. Les deux volets de l'impartialité sont énoncés dans la célèbre maxime selon laquelle non seulement justice doit être rendue mais encore il doit être manifeste que justice est rendue. Comme le juge de Grandpré l'a dit dans l'arrêt *Committee for Justice and Liberty c. L'Office national de l'énergie*²⁶, le critère applicable consiste à se demander si « une personne bien renseignée qui étudierait la question en profondeur, de façon réaliste et pratique » craindrait que le juge ne soit pas impartial. La question de savoir s'il existe une crainte raisonnable de partialité doit être examinée en fonction du point de vue d'une personne raisonnable, impartiale et bien informée.

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²⁵ [1991] 2 R.C.S. 114, à la p. 139.

²⁶ [1978] 1 R.C.S. 369, qui trouve sa confirmation la plus récente dans *R.D.S. c. La Reine*, [1997] 3 R.C.S. 484, opinion du juge Cory, à la p. 530 et opinion des juges L'Heureux-Dubé et McLachlin, à la p. 502.

A.2 Certes, l'impartialité et l'indépendance de la magistrature sont des notions distinctes, mais il existe un rapport étroit entre elles. Ce rapport a été étudié récemment par le juge Gonthier au nom des juges majoritaires de la Cour suprême du Canada dans *Ruffo c. Conseil de la magistrature*²². La Cour a fait observer que le droit d'être jugé par un tribunal indépendant et impartial fait partie intégrante des principes de justice fondamentale protégés par l'art. 7 de la *Charte canadienne*²³, et elle a repris les propos de M. le juge Le Dain dans *R. c. Valente* :

Même s'il existe de toute évidence un rapport étroit entre l'indépendance et l'impartialité, ce sont néanmoins des valeurs ou exigences séparées et distinctes. L'impartialité désigne un état d'esprit ou une attitude du tribunal vis-à-vis des points en litige et des parties dans une instance donnée. Le terme « impartial » [...] connote une absence de préjugé, réel ou apparent.

[...]

Tant l'indépendance que l'impartialité sont fondamentales non seulement pour pouvoir rendre justice dans un cas donné, mais aussi pour assurer la confiance de l'individu comme du public dans l'administration de la justice. Sans cette confiance, le système ne peut commander le respect et l'acceptation qui sont essentiels à son fonctionnement efficace. Il importe donc qu'un tribunal soit perçu comme indépendant autant qu'impartial²⁴ [...]

²² [1995] 4 R.C.S. 267, aux pp. 296 à 299.
²³ *Ibid.*
²⁴ [1985] 2 R.C.S. 673, aux pp. 685 et 689.

E. Conflits d'intérêts

1. Les juges se recusent chaque fois qu'ils s'estiment incapables de juger impartialement.

2. Les juges se recusent chaque fois qu'ils croient qu'une personne raisonnable, impartiale et bien informée aurait des motifs de soupçonner qu'il existe un conflit entre leur intérêt personnel (ou celui de leurs proches parents, de leurs amis intimes ou de leurs associés) et l'exercice de leur fonction.

3. Il n'est pas à propos de se recusar si, selon le cas : a) l'élément laissant croire à la possibilité de conflit est négligeable ou ne permettrait pas de soutenir de manière plausible que la recusation s'impose; b) il est impossible de constituer un autre tribunal qui puisse être saisi de l'affaire ou, en raison de l'urgence d'instruire la cause, l'omission d'agir pourrait entraîner un déni de justice.

Commentaires :

A. Formulation générale

A.1 Depuis au moins l'époque de John Locke, vers la fin du XVII^e siècle, la décision des litiges par des juges impartiaux et indépendants a été reconnue comme un élément essentiel de notre société²¹. L'impartialité est la qualité fondamentale des juges et l'attribut central de la fonction judiciaire. L'énoncé des principes ne traitent pas, et ne sont pas destinés à traiter, du droit relatif à la recusation des juges.

²¹ Peter H. Russell, *The Judiciary in Canada: The Third Branch of Government* (1987), (ci-après « Russell »).

2. Les juges, dès leur nomination, mettent fin à toutes activités ou associations politiques. Ils s'abstiennent de toute activité susceptible de donner à une personne raisonnable, impartiale et bien informée, l'impression qu'ils sont activement engagés en politique.

3. Les juges s'abstiennent des activités suivantes :

a) l'adhésion aux partis politiques et la collecte de fonds politiques;

b) la participation aux réunions politiques et à des activités de financement politique;

c) la contribution aux partis ou aux campagnes politiques;

d) la participation publique à des débats politiques, sauf sur des questions concernant directement le fonctionnement des tribunaux, l'indépendance de la magistrature ou des éléments fondamentaux de l'administration de la justice;

e) la signature de pétitions visant à influencer une décision politique.

4. Bien que les membres de la famille du juge puissent être actifs en politique, le juge a conscience que les activités de cette nature des membres de sa famille immédiate peuvent compromettre, même à tort, l'image d'impartialité du juge. Le juge ne siège dans aucune cause où, pour des motifs raisonnables, son impartialité risquerait d'être mise en doute.

C. Activités civiles ou charitables

1. Les juges sont libres de participer à des activités civiles, charitables et religieuses, sous réserve des considérations suivantes :

a) Les juges évitent toute activité ou association qui risque de compromettre leur impartialité ou de préjudicier à l'accomplissement de leurs fonctions judiciaires.

b) Les juges ne accueillent pas de dons (sauf auprès de collègues juges ou à des fins régulières, rattachées à la magistrature) ni n'engagent le prestige de leur fonction dans de telles collectes.

c) Les juges évitent toute participation à des causes ou à des organisations susceptibles d'être impliquées dans un litige.

d) Les juges s'abstiennent de donner des conseils juridiques ou des conseils en matière de placements.

D. Activités politiques

1. Les juges s'abstiennent d'activités telles l'adhésion à un groupe ou à une organisation, ou la participation à un débat public, lorsque, du point de vue d'une personne raisonnable, impartiale et bien informée, les activités en question minent l'image d'impartialité des juges relativement à des questions susceptibles d'être soumises aux tribunaux.

6. IMPARTIALITÉ

Énoncé : Les juges doivent être impartiaux et se montrer impartiaux dans leurs décisions et tout au long du processus décisionnel.

Principes :

A. Formulation générale

1. Les juges voient à ce que leur conduite, tant dans l'enceinte du tribunal qu'à l'extérieur de celle-ci, entretienne et accroisse la confiance en leur impartialité et en celle de la magistrature en général.

2. Les juges, autant qu'il est raisonnablement possible de le faire, gèrent leurs affaires personnelles et leurs entreprises financières de façon à réduire au minimum les possibilités de récusation.

3. L'apparence d'impartialité doit être évaluée en fonction de la perception d'une personne raisonnable, impartiale et bien informée.

B. Comportement des juges

1. Tout en agissant résolument et en conduisant les débats avec fermeté et célérité, les juges traitent tous ceux qui sont devant le tribunal avec courtoisie.

Le quatrième principe traite du rôle des juges qui, dans le cadre de certaines instances, font face à des propos manifestement non pertinents et sexistes ou racistes, ou à des conduites de même nature mais également inappropriées. Ce principe n'implique pas que l'on doive forcément interdire la défense légitime d'idées, ou empêcher la présentation de témoignages par ailleurs admissibles, lorsque, par exemple, des questions de sexe, de race ou d'autres facteurs semblables sont régulièrement soulevés devant la cour. Le conseil donné est compatible avec le devoir des juges d'écouter le débat en toute impartialité, tout en le contrôlant fermement, au besoin, et de faire preuve de toute la rigueur voulue pour maintenir un climat de dignité, d'égalité et d'ordre dans la salle d'audience.

Le quatrième principe n'impose pas un idéal irréaliste. De plus, l'application de ce principe peut parfois présenter un défi énorme. Le système contradictoire donne beaucoup de latitude aux parties et à leurs avocats, et il peut être difficile d'évaluer avec justesse la pertinence et l'importance de la preuve au moment de sa présentation. Les juges doivent constamment chercher à maintenir un juste équilibre. Il peut arriver qu'une analyse soit effectuée après coup et que, avec le bénéfice d'une réflexion plus approfondie, elle révèle que la situation aurait pu être traitée différemment; si tel est le cas, il ne faut pas conclure automatiquement que le juge a omis de prendre les mesures voulues à l'égard d'une conduite inappropriée au cours d'une instance.

4. Comme il est dit, de façon plus développée, dans le chapitre sur l'impartialité, les juges devraient s'efforcer d'adopter une conduite telle qu'une personne raisonnable, impartiale et bien informée soit justifiée de les croire impartiaux. Les juges devraient éviter les observations, les expressions, les gestes ou les comportements qui, aux yeux d'une personne raisonnable, pourraient manifester un manque de respect ou de sensibilité à l'égard d'une autre personne. Au nombre de tels agissements figurent des remarques non pertinentes fondées sur des stéréotypes de nature raciale, culturelle, sexuelle ou autre, et toute autre conduite laissant entendre que des personnes comparaisant devant le tribunal ne seront pas traitées également.

La conduite inappropriée d'un juge peut résulter de son ignorance de traditions culturelles, raciales ou autres qui sont différentes des siennes, comme elle peut découler de son défaut de se rendre compte qu'une certaine conduite est offensante pour d'autres personnes. Les juges doivent donc utiliser des moyens appropriés pour demeurer au fait des changements d'attitudes et de valeurs; de plus, ils doivent profiter des possibilités de formation offertes (et, de toute nécessité, raisonnablement accessibles) pour les aider à être, et à paraître, impartiaux. Les juges veillent à ce que ces efforts contribuent à les faire percevoir comme impartiaux, et ne ternissent leur image d'aucune façon. Compte tenu des exigences de l'indépendance et de l'impartialité, ce ne sont pas nécessairement tous les types de formation ou outils de formation qui pourront être employés à cette fin. Les juges ne doivent cependant pas être paralysés par de tels dangers. Il faut éviter que des préoccupations d'image exagérées ou non fondées ne minent les efforts déployés pour parfaire la formation des juges.

Commentaires :

1. La Constitution et de nombreuses lois font état d'un engagement ferme à garantir à tous l'égalité devant la loi et sous le régime de la loi, de même que l'égalité en matière de protection et de bénéfice de la loi, sans discrimination. Il ne s'agit pas d'un engagement à un traitement identique, mais d'un engagement à assurer « [...] l'égalité et la dignité de tous les êtres humains » et à donner suite au « désir de remédier à la discrimination dont sont victimes les groupes de personnes défavorisées sur les plans social, politique ou juridique dans notre société¹⁹ ». En outre, le droit canadien ne restreint pas la notion de discrimination à l'intention de l'auteur d'un acte; il s'étend aux effets de l'acte en question²⁰. Abstraction faite des garanties explicites prévues dans la Constitution et dans la loi, un traitement égal et impartial est depuis longtemps considéré comme un attribut essentiel de la justice. La réalité est complexe et les exigences qui en découlent ne sont pas toujours faciles à respecter, mais cet engagement ferme pris par le législateur au nom de la société place le souci de l'égalité au cœur même du principe de la justice sous le régime du droit.

2. L'égalité sous le régime du droit n'est pas seulement fondamentale pour la justice; elle est aussi étroitement liée à l'impartialité judiciaire. Par exemple, si un juge parvient à un résultat correct mais qu'il pratique des stéréotypes, il contrevient au principe de l'impartialité, réelle ou apparente.

3. Les juges ne doivent pas se laisser influencer par des attitudes fondées sur des stéréotypes, des mythes ou des préjugés. Ils doivent donc tout mettre en œuvre pour identifier ces attitudes, y être sensibles et les corriger.

¹⁹ *Eldridge c. C.-B. (P.C.)*, [1997] 3 R.C.S. 624, opinion exprimée par le juge LaForest au nom de la cour, à la p. 667.

²⁰ *Ibid.*, aux pp. 670 et 671.

5. ÉGALITÉ

Énoncé :

Les juges doivent adopter une conduite propre à assurer à tous un traitement égal et conforme à la loi, et ils doivent conduire les instances dont ils sont saisis dans ce même esprit.

Principes :

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1. Les juges exercent leurs fonctions en assurant à tous (par exemple les parties, les témoins, les membres du personnel de la cour et les collègues juges), sans discrimination, un traitement approprié.

2. Les juges s'efforcent d'être conscients des particularités découlant, en outre, du sexe, de la race, des croyances religieuses, des caractéristiques ethniques, de la culture, de l'orientation sexuelle ou d'une déficience, et ils s'efforcent de comprendre ces particularités.

3. Les juges s'abstiennent d'adhérer à tout organisme qui, à leur connaissance, pratique une forme quelconque de discrimination prohibée par la loi.

4. Lorsque, dans le cadre d'une instance, un membre du personnel de la cour, un avocat ou toute autre personne assujétie à l'autorité du juge a une conduite ou tient des propos clairement dénues de pertinence, qui soient sexistes ou racistes ou qui manifestent une discrimination fondée sur des motifs illégaux, le juge se dissocie de cette conduite ou de ces propos et il exprime sa désapprobation à leur égard.

Fonctions administratives et autres fonctions hors cour

12. De nos jours, les fonctions judiciaires englobent des activités administratives et d'autres activités hors cour. Les juges sont chargés de tâches importantes — par exemple, la gestion d'instances, la tenue de conférences préparatoires et la participation à des comités de la cour. Toutes ces fonctions sont de nature judiciaire et devraient être accomplies avec diligence.

Fonctions générales relatives à l'administration de la justice

13. En raison de leur situation privilégiée, les juges ont souvent la possibilité de contribuer d'une façon ou d'une autre à l'administration de la justice. Dans la mesure où le temps le leur permet, les juges peuvent s'impliquer dans l'administration de la justice — par exemple en prenant part à des programmes d'éducation permanente à l'intention des avocats et des juges, et en participant à des activités destinées à mieux faire comprendre le droit et la procédure judiciaire au grand public. Ces activités sont discutées dans le chapitre sur l'impartialité, particulièrement aux parties B et C de celui-ci.

14. Un juge doit-il signaler ou faire signaler certains agissements d'un avocat à l'ordre professionnel de celui-ci ? Dans l'affirmative, dans quelles circonstances une telle dénonciation est-elle justifiée ? Ces questions sont certes délicates. Le juge qui prend ce genre de mesure risque de ne plus être apte à entendre la cause dans laquelle agit l'avocat dénoncé, puisque l'opinion exprimée sur l'avocat peut soulever un doute raisonnable quant à l'existence d'un parti pris contre l'avocat ou son client. Par ailleurs, le juge occupe une position privilégiée pour observer la conduite des avocats devant le tribunal. Si, sans qu'il n'y ait outrage au tribunal, le juge dispose de preuves claires et fiables d'inconduite grave ou d'incompétence grossière d'un avocat, il doit, en règle générale, prendre les mesures qui s'imposent pour remédier à la situation. Le juge évalue avec soin si l'intérêt de la justice lui commande d'attendre la conclusion de l'instance dont il est saisi, ou s'il existe des circonstances spéciales exigeant que des mesures soient prises plus tôt même s'il continue à entendre la cause.

Ces questions sont abordées dans le chapitre sur l'impartialité (partie B).

9. De façon générale, les juges doivent accomplir toutes les fonctions judiciaires qui leur sont régulièrement assignées, être ponctuels, à moins que d'autres tâches judiciaires ne les empêchent, et ils doivent être raisonnablement disponibles pour s'acquitter de toutes les fonctions qui leur sont attribuées.

10. L'élaboration d'un bon jugement est souvent longue et ardue. Toutefois, le juge doit prononcer son jugement, et les motifs qui l'accompagnent, dès qu'il est raisonnablement possible de le faire, compte tenu de l'urgence de l'affaire et des autres circonstances particulières auxquelles le juge fait face. Ces circonstances peuvent comprendre la maladie, la longueur ou la complexité de l'affaire; ainsi qu'une charge de travail ou un autre facteur exceptionnels pouvant empêcher que le jugement ne soit prononcé plus rapidement. En 1985, le Conseil canadien de la magistrature a, par voie de résolution, exprimé l'avis que, sauf s'il existe des circonstances particulières, les juges devraient s'abstenir de formuler des commentaires concernant des personnes qui ne comparassent pas devant le tribunal, à moins que cela ne soit nécessaire au règlement de l'affaire. Par exemple, les juges devraient s'abstenir de formuler, dans leurs jugements, des commentaires non pertinents ou superflus en ce qui concerne la conduite ou les motifs d'une personne¹⁸.

¹⁷ Résolution de septembre 1985 du Conseil canadien de la magistrature. La loi et les règles de procédure peuvent fixer un délai dans lequel le jugement doit être rendu : voir par ex. l'art. 465 du *Code de procédure civile* (Cpc). L'incapacité répétée de certains juges à rendre jugement dans les délais prévus a donné lieu au dépôt de plusieurs plaintes devant le Conseil canadien de la magistrature : voir le *Rapport annuel 1992-1993* du Conseil canadien de la magistrature, à la p. 14.

¹⁸ Voir *Propos sur la conduite des juges* (1991), (ci-après « *Propos* »), aux pp. 92 et 93; *Shevket*, aux pp. 294 et 295.

6. Il convient maintenant d'aborder la question de la diligence judiciaire sous les trois rubriques suivantes : les fonctions juridictionnelles ; les fonctions administratives et autres fonctions hors cour ; et les fonctions générales relatives à l'administration de la justice.

Fonctions juridictionnelles

7. La diligence dans l'exercice des fonctions juridictionnelles met en jeu les éléments suivants : le respect des principes de l'impartialité et de l'égalité dans l'application de la loi ; la rigueur ; l'esprit de décision ; la promptitude ; et la prévention des abus de procédure et des abus envers les témoins. En principe, les qualités et les habiletés qui précèdent sont toutes nécessaires aux juges ; mais en fait, les aspects particuliers des différents litiges et la conduite des avocats et des parties en opposition peuvent obliger les juges présidant les audiences à pratiquer une ou plusieurs de ces attitudes plus que d'autres — parfois même à en pratiquer certaines au détriment de certaines autres — afin de garder un juste équilibre. Il peut s'avérer particulièrement difficile de trouver ce juste milieu lorsque l'une des parties est représentée par un avocat alors que l'autre ne l'est pas. Bien qu'il doive faire tout son possible pour empêcher que la partie non représentée ne soit indûment désavantagée, le juge doit s'assurer qu'il maintient son impartialité.

8. L'obligation d'être patients et de traiter avec courtoisie tous ceux qui se présentent devant eux ne dispense pas les juges de l'obligation, tout aussi importante, de faire preuve d'esprit de décision afin de régler avec célérité les affaires dont ils sont saisis. Un critère ultime permet de déterminer si le juge a réussi à combiner ces éléments dans la conduite d'une affaire donnée : il s'agit de savoir si cette affaire a été jugée non seulement avec justice, mais également d'une manière qui paraisse juste¹⁶.

¹⁶ Voir *Brouillard c. La Reine*, [1985] 1 R.C.S. 39, dans lequel le juge Lamer (maintenant juge en chef) a déclaré, à la page 48, au nom de la cour : « [...] si le juge peut et doit intervenir pour que justice soit rendue, il doit quand même le faire de telle sorte que justice paraisse être rendue. » (Mots soulignés dans l'original.) La cour cite également avec approbation le débat sur cette question tiré de G. Fautoux, *Le livre du magistrat* (1980) (ci-après « Livre »).

4. Comme il a été mentionné au huitième commentaire du

chapitre sur l'indépendance de la magistrature, il arrive que les gouvernements confient aux juges des missions qui les éloignent de leurs fonctions judiciaires habituelles. On pense par exemple à la nomination de juges à des commissions royales d'enquête.

Les juges ne doivent accepter ce genre de mandat qu'après avoir consulté leur juge en chef. Ils s'assurent ainsi que l'acceptation de la charge offerte ne nuira pas au bon fonctionnement du tribunal ou n'imposera pas une charge de travail indue à leurs collègues. La position adoptée par le Conseil canadien de la magistrature à cet égard, approuvée lors de la réunion semi-annuelle de cet organisme tenue en mars 1998, fournit des conseils utiles.

5. Dès l'époque de la *Grande Charte*, on a reconnu que les juges doivent posséder de solides connaissances juridiques¹³. Les juges doivent maîtriser non seulement les règles juridiques de fond et les règles de procédure, mais également leurs répercussions concrètes. Comme le fait remarquer un auteur, la loi n'est pas que pure théorie; elle a aussi des effets pratiques¹⁴. Le constant souci d'acroître les connaissances, les compétences et les aptitudes nécessaires pour bien juger constitue un des aspects importants de la diligence. Cette obligation suppose que les juges participent à des programmes de formation permanente et qu'ils poursuivent des études personnelles¹⁵.

¹³ On pense plus particulièrement à l'article 45 de la *Grande Charte* : « Nous ne nommerons justiciers, cométtables, shérifs ou baillis que des hommes qui connaissent la loi du royaume et qui soient enclins à la bien observer », tiré de P. Pactet, *Les institutions politiques en Grande-Bretagne*, 1960, à la p. 260.

¹⁴ R. A. Samsek, « A Case for Social Law Reform », (1977) 55 R. Barreau can., 409, à la p. 411.

¹⁵ Voir, par exemple, la Fondation du Barreau canadien, *Rapport d'un comité spécial de l'Association du Barreau canadien sur l'indépendance de la magistrature au Canada*, (1985), à la p. 36 : « L'exécution compétente des fonctions judiciaires est un facteur important de l'appui du public à un pouvoir judiciaire indépendant »; voir aussi, de façon générale, M. L. Friedland, *Une place à part : l'indépendance et la responsabilité de la magistrature au Canada*, (1995), aux pp. 159 et suivantes; voir également le chapitre 5 sur l'égalité. L'Institut national de la magistrature recommande actuellement que chaque juge bénéficie d'au moins dix jours de formation permanente par année, bien que la charge de travail des juges ne permette pas toujours d'atteindre cet objectif.

Commentaires :

1. Socrate conseillait aux juges d'écouter avec courtoisie, de répondre avec sagesse, d'analyser avec sobriété et de décider avec impartialité. Ces vertus judiciaires sont autant d'aspects du devoir de diligence. Bien qu'il y ait lieu d'ajouter à la liste de Socrate la vertu de promptitude, il faut noter que la diligence n'est pas essentiellement une question de promptitude. Au sens large, la diligence consiste à exercer ses fonctions judiciaires avec compétence, soin et attention, de même qu'avec une célérité raisonnable.

2. L'article 55 de la *Loi sur les juges* (qui s'applique aux juges nommés par le gouvernement fédéral) dispose que les juges doivent se consacrer à leurs fonctions judiciaires¹². Sous réserve des restrictions imposées par la *Loi sur les juges* et par leur rôle judiciaire, les juges sont libres de participer à toute autre activité qui ne nuit pas à leurs fonctions judiciaires. En résumé, les activités du tribunal passent en premier.

3. S'il est vrai que les juges doivent faire preuve de diligence dans l'exercice de leurs fonctions judiciaires, certains éléments influent sur leur capacité de respecter cette obligation, à savoir leur charge de travail, le caractère suffisant ou non des ressources dont ils disposent — en outre le personnel —, l'aide technique qu'ils est offrent, ainsi que le temps qu'ils peuvent consacrer à la recherche, aux délibérations, à la rédaction et à l'accomplissement de fonctions judiciaires autres que la présidence des audiences. Il convient d'accorder toute l'importance voulue aux responsabilités des juges envers leur famille. Les juges doivent disposer de suffisamment de vacances et de temps libre pour se maintenir en bonne santé physique et mentale et pour accroître les habiletés et les connaissances qui leur sont nécessaires pour bien juger.

¹² *Loi sur les juges*, L.R.C. (1985), ch. J-1, art. 55. Le texte se lit comme suit :
55. Les juges se consacrent à leurs fonctions judiciaires à l'exclusion de toute autre activité, qu'elle soit exercée directement ou indirectement, pour leur compte ou celui d'autrui.

4. DILIGENCE

Énoncé : | *Les juges doivent exercer leurs fonctions judiciaires avec diligence.*

Principes :

1. Les juges consacrent leur activité professionnelle à leurs fonctions judiciaires, lesquelles, entendues au sens large, englobent non seulement le fait de présider les audiences et de rendre des décisions, mais également l'accomplissement d'autres tâches judiciaires essentielles au bon fonctionnement du tribunal.
2. Les juges prennent les mesures qui s'imposent pour préserver et accroître les connaissances, les compétences et les qualités personnelles qui sont nécessaires à l'exercice de leurs fonctions judiciaires.
3. Les juges s'efforcent de remplir toutes leurs fonctions judiciaires, notamment de rendre jugement dans les affaires mises en délibéré, avec une promptitude raisonnable.
4. Les juges s'abstiennent de toute conduite incompatible avec l'exercice diligent de leurs fonctions judiciaires, et ils réprouvent pareille conduite chez leurs collègues.

6. En plus d'observer des normes élevées de conduite, les juges devraient inciter leurs collègues à faire de même et les appuyer dans cette démarche : la conduite répréhensible d'un juge rejaille sur l'ensemble de la magistrature.

7. Les juges ont également l'occasion d'observer la conduite de leurs collègues. Si un juge prend connaissance d'éléments qu'il estime faibles et qui portent fortement à conclure à une conduite non professionnelle de la part d'un autre juge, il tient une réflexion sur les mesures qui permettront de corriger la situation. Le juge effectue cette analyse à la lumière de l'intérêt du public à ce que la justice soit bien administrée. Le juge peut se renseigner auprès de ses collègues; il peut donner des conseils au collègue qui a un problème, ou l'assister dans ses démarches en vue d'obtenir de l'aide; et il peut faire part du problème au juge en chef, au juge en chef associé ou au juge en chef adjoint de la cour.

juge individuellement et la magistrature en général. Si tel était le cas, cette conduite devrait être évitée. Comme le dit Shaman : « [trad.] [...] la norme ultime est celle d'une conduite qui réaffirme sans cesse l'aptitude du juge à s'acquitter des devoirs élevés de sa charge¹¹ ». Les juges doivent faire preuve de respect à l'égard de la loi, d'intégrité dans leurs affaires privées et, de façon générale, éviter même l'apparence d'une conduite répréhensible.

4. Bien entendu, les juges ont une vie privée et ils doivent pouvoir jouir, dans toute la mesure du possible, des droits et des libertés des citoyens ordinaires. En outre, les juges coupés de la réalité auront de moins bonnes chances d'être efficaces. Ni l'intérêt de la magistrature, ni l'intérêt public ne seront servis si les juges se trouvent indûment isolés de la communauté qu'ils servent. Dans le domaine juridique, il arrive souvent que la norme appliquée soit celle de la personne raisonnable. L'appréciation des faits, qui est l'une des fonctions importantes des juges, exige que les éléments de preuve soient évalués à la lumière du bon sens et de l'expérience. Par conséquent, les juges doivent, de manière compatible avec leur rôle spécial, demeurer près du public. Cette question est traitée plus en détail dans le chapitre sur l'impartialité, particulièrement à la partie C de celui-ci.

5. La conduite des juges, en cour ou hors cour, sera à coup sûr soumise à l'examen attentif et à la critique du public. Les juges doivent donc accepter certaines restrictions à l'égard de leurs activités — même de celles qui ne susciteraient aucune critique si elles étaient accomplies par d'autres membres de la communauté. Les juges doivent maintenir le délicat équilibre entre les devoirs de leur charge et les exigences légitimes reliées à leur vie et à leur épanouissement personnels ainsi qu'à leur famille.

¹¹ *Ibid.*, à la p. 312.

Commentaires :

1. La confiance et le respect que le public porte à la magistrature sont essentiels à l'efficacité de notre système de justice et, ultimement, à l'existence d'une démocratie fondée sur la primauté du droit. De nombreux facteurs peuvent ébranler la confiance et le respect du public à l'égard de la magistrature, notamment : des critiques injustifiées ou malavisées; de simples malentendus sur le rôle de la magistrature; ou encore toute conduite de juges, en cour ou hors cour, démontrant un manque d'intégrité. Par conséquent, les juges doivent s'efforcer d'avoir une conduite qui leur mérite le respect du public et ils doivent cultiver une image d'intégrité, d'impartialité et de bon jugement. La magistrature canadienne possède une longue tradition de respect de ces principes. Cette tradition sert de fondement aux règles qui définissent la conduite à suivre.

2. Bien qu'il soit facile d'énoncer un idéal d'intégrité en termes généraux, il est beaucoup plus difficile et peut-être malavisé de le préciser davantage. Il y a peu de principes absolus puisque la façon dont une conduite donnée sera perçue dans une communauté dépend de ses valeurs collectives, et que celles-ci varient selon les lieux et les époques.

3. Au dire d'un auteur, la conduite d'un juge doit être appréciée essentiellement « [trad.] [...] en fonction des éléments qui fondent l'aptitude du juge à accomplir son travail¹⁰ ». Il faut donc examiner en premier lieu comment cette conduite particulière serait perçue par un membre de la communauté qui soit raisonnable, impartial, et bien informé, et en second lieu, déterminer si cette perception est susceptible de porter atteinte au respect dont doivent jouir le

¹⁰ J. Shuman et al., *Judicial Conduct and Ethics* (2d, 1995), (ci-après « *Shuman* »), à la p. 335.

3. INTÉGRITÉ

Énoncé : *Les juges doivent s'appliquer à avoir une conduite intégrè, qui soit susceptible de promouvoir la confiance du public en la magistrature.*

Principes :

- 1. Les juges déploient tous les efforts possibles pour que leur conduite soit sans reproche aux yeux d'une personne raisonnable, impartiale et bien informée.
- 2. En plus d'observer des normes élevées de conduite personnelle, les juges incitent leurs collègues à faire de même et ils les appuient dans cette entreprise.

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8. Les juges sont souvent invités à siéger à des commissions d'enquête. Avant d'accepter une telle nomination, les juges doivent étudier soigneusement les répercussions qu'elle peut avoir sur l'indépendance judiciaire. Il est arrivé que des juges membres de commissions se soient trouvés mêlés à des controverses publiques et aient été critiqués et mis dans l'embarras par les gouvernements mêmes qui les avaient nommés. Les juges doivent soigneusement examiner leur mandat, ainsi que les facteurs en cause, tels que le temps et les ressources dont ils disposent, afin de s'assurer que tous ces éléments sont compatibles avec la fonction judiciaire⁹. La position du Conseil canadien de la magistrature sur la nomination aux commissions d'enquête de juges nommés par le gouvernement fédéral, approuvée en mars 1998, fournit des conseils utiles en la matière.

⁹ Il est intéressant de noter que la High Court d'Australie a conclu, pour des motifs ayant trait à la séparation des pouvoirs, que des limites juridiques strictes étaient applicables à la nature des commissions sur lesquelles les juges pouvaient siéger : *Wilson c. Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 70 A.L.J.R. 814. Voir également *R. MacGregor Dawson, The Government of Canada* (3d), à la p. 482 : [trad.] « Il ne semble pas vraiment utile de veiller à ce que le juge exerce ses fonctions à l'écart de la politique et de lui accorder une indépendance marquée à l'égard du pouvoir exécutif, si ensuite on le place dans la position de membre d'une commission royale, où son impartialité peut être contestée et où ses conclusions — si justes et si impartiales soient-elles — risquent d'être interprétées comme favorisant un parti politique aux dépens d'un autre. En effet, dans un grand nombre d'enquêtes ou de commissions, le juge ne peut échapper à la controverse : [...] Il a été maintes fois démontré que, dans nombre de cas, le juge voit sa dignité et sa réputation entachées, et son avenir assombri. Qui plus est, si le juge n'exerce pas ses fonctions habituelles pendant de longues périodes, il risque de perdre son esprit d'équilibre et sa distance; et il se rend compte qu'il est très difficile de revenir à la normale et d'ajuster ses points de vue et ses façons de penser à un travail purement judiciaire. »

6. Les juges doivent également être à l'affût de toute tentative de miner leur indépendance institutionnelle ou opérationnelle. Bien qu'ils doivent prendre garde de ne pas banaliser le principe de l'indépendance de la magistrature en l'invoquant abusivement, et visant leurs structures institutionnelles, les juges se doivent de défendre fermement leur propre indépendance. S'il est vrai que la forme et la nature de cette défense nécessitent une étude minutieuse, le bien-fondé du principe ne saurait être remis en question⁷.

7. Les juges reconnaissent également que nombre de personnes ignorent ces concepts et leur impact sur les responsabilités de la magistrature. Il devient donc important d'informer le public sur la magistrature et sur l'indépendance des juges; toute méprise peut leur faire perdre la confiance du public. À titre d'exemple, le public risque de s'y méprendre quant à la nature des rapports entre le pouvoir judiciaire et le pouvoir exécutif — en outre, à la vue du double rôle que joue le procureur général, à la fois ministre du cabinet chargé de l'administration de la justice et avocat de l'État. Le public risque de se faire une fausse idée de l'indépendance judiciaire si les médias laissent croire que ce principe interdit toute remise en question des actes des juges et tout débat public à leur sujet. Les juges devraient donc, à chaque fois que cela leur est possible, aider le public à comprendre l'importance fondamentale de l'indépendance de la magistrature. Il y va de l'intérêt de chaque citoyen⁸.

⁷ Ces questions sont approfondies plus loin au chapitre 6.

⁸ L'expression « toute occasion qui leur est donnée » devrait rappeler aux juges que les circonstances dans lesquelles ils s'apprêtent à faire de telles interventions publiques doivent être soigneusement examinées, en tenant compte des contraintes inhérentes à leur rôle de juge. Certaines des considérations pertinentes à de telles questions sont approfondies au chapitre 6, intitulé « Impartialité »; voir également, par exemple, J.B. Thomas, *Judicial Ethics in Australia* (2d, 1997), (ci-après « Thomas »), aux pp. 106 à 111.

[...]

Indépendamment de leur provenance — ministérielle, journalistique ou autre —, toutes ces pressions doivent être fermement repoussées. Le principe va tellement de soi, et est si élémentaire, qu'il n'est pas nécessaire de l'expliquer davantage⁴.

5. Compte tenu de l'indépendance dont ils jouissent, les juges ont la responsabilité collective de promouvoir des normes élevées de conduite. La primauté du droit et l'indépendance de la magistrature reposent avant tout sur la confiance du public. Les écarts de conduite et les comportements douteux de juges ont tendance à miner cette confiance. Ainsi que le professeur Nolan le souligne, l'indépendance judiciaire et la déontologie judiciaire vivent en symbiose⁵. L'acceptation des décisions des tribunaux par le public et l'appui qu'il donne à celles-ci reposent sur sa confiance en l'intégrité et en l'indépendance de la magistrature. Cette confiance dépend elle-même de la mesure dans laquelle la magistrature observe des normes de conduite élevées.

[trad.] Ce n'est qu'en observant des normes de conduite élevées que la magistrature (1) pourra continuer à se mériter la confiance du public, sur laquelle repose le respect des décisions judiciaires; (2) pourra être en mesure d'exercer sa propre indépendance dans ses jugements et ses décisions⁶.

En résumé, la manifestation et la promotion de normes de conduite judiciaire élevées constituent une composante essentielle de l'indépendance de la magistrature.

⁴ J. O. Wilson, *A Book for Judges*, (1980), (ci-après « Wilson »), aux pp. 54 et 55.
⁵ B. Nolan, « The Role of Judicial Ethics in the Discipline and Removal of Federal Judges », dans *Research Papers of the National Commission on Judicial Discipline and Removal Volume I* (1993), aux pp. 867 à 912, à la p. 874.
⁶ *Ibid.*, à la p. 875.

conditions et garanties objectives comprennent, en outre, l'immovibilité, la sécurité de la rémunération et l'immunité contre toute poursuite civile à l'égard des actes judiciaires.

3. La première qualité d'un juge est sa capacité de rendre des

décisions de façon indépendante et impartiale. La question de l'impartialité des juges est traitée en détail au chapitre 6. Toutefois,

l'indépendance judiciaire n'implique pas uniquement une

organisation externe et opérationnelle appropriées; elle implique également que chaque juge puisse rendre ses décisions de façon

indépendante et impartiale. Les juges ont le devoir d'appliquer

la loi telle qu'ils la comprennent, sans crainte ni favoritisme, et indépendamment de l'accueil, favorable ou non, de leur décision.

C'est là une des pierres angulaires du principe de la primauté

du droit. Les juges devraient, individuellement et collectivement, préserver, encourager et défendre l'indépendance de la magistrature.

4. Les juges doivent, évidemment, repousser toute tentative injustifiée — de parties, de politiciens, de fonctionnaires ou de toute autre personne — visant à influencer leur décision. Les juges doivent également veiller à ce que les communications qu'ils entretiennent avec ces personnes ne puissent soulever d'inquiétudes raisonnables en ce qui concerne leur indépendance. Ainsi que M. le juge J. O. Wilson l'explique dans son ouvrage *A Book for Judges* :

[trad.] Chaque juge sait bien que toute tentative pour influencer le tribunal ne peut avoir lieu qu'en public, dans une salle d'audience, et ne peut avoir pour auteur qu'un avocat ou un plaideur. La connaissance de cette règle par les juges peut être tenue pour acquise avec passablement de certitude, mais l'expérience démontre que d'autres personnes ignorent ce principe élémentaire ou en font délibérément fi, et que, avec le temps, tout juge finira probablement par subir des pressions, soit de la part de parties, soit de la part d'autres personnes, visant à influencer ses décisions dans un litige.

Commentaires :

1. L'indépendance judiciaire n'est pas un droit qui appartient en propre à chaque juge, mais plutôt le fondement de l'impartialité judiciaire et un droit constitutionnel détenu par chaque citoyen. L'indépendance de la magistrature s'entend de l'indépendance individuelle et collective ou institutionnelle nécessaires tant à un processus décisionnel impartial qu'à des décisions impartiales¹. L'indépendance de la magistrature modèle donc à la fois un état d'esprit et un ensemble de structures institutionnelles et opérationnelles. L'état d'esprit évoqué vise l'impartialité objective du juge; les structures impliquent que l'on précise la nature des relations entre la magistrature et les autres institutions, notamment les autres organes de l'État, pour garantir l'indépendance et l'impartialité judiciaires aussi bien dans leur réalité concrète que dans l'image projetée. L'Énoncé et les Principes qui précèdent portent sur les devoirs déontologiques des juges en matière d'indépendance individuelle et collective. Ces lignes de conduite ne traitent donc pas des multiples questions juridiques reliées à l'indépendance de la magistrature.

2. Dans *Valente c. La Reine*, M. le juge Le Dain a fait remarquer que « l'indépendance judiciaire fait intervenir des rapports tant individuels qu'institutionnels : l'indépendance individuelle d'un juge, qui se manifeste dans certains de ses attributs, telle l'inamovibilité, et l'indépendance institutionnelle de la cour ou du tribunal qu'il préside, qui ressort de ses rapports institutionnels ou administratifs avec les organes exécutif et législatif du gouvernement² ». Il a conclu que « [...] l'indépendance judiciaire est un statut ou une relation reposant sur des conditions ou des garanties objectives, autant qu'un état d'esprit ou une attitude dans l'exercice concret des fonctions judiciaires [...] »³. Ces

¹ S. Shetreet, *Judges On Trial*, (1976), (ci-après « *Shetreet* »), à la p. 17.

² [1985] 2 R.C.S. 673, à la p. 687.

³ *Ibid.*, à la p. 689.

2. INDÉPENDANCE DE LA MAGISTRATURE

Énoncé : L'indépendance de la magistrature est indispensable à l'exercice d'une justice impartiale sous un régime de droit. Les juges doivent donc faire respecter l'indépendance judiciaire, et la manifester tant dans ses éléments individuels qu'institutionnels.

Principes :

1. Les juges exercent leurs fonctions de façon indépendante, à l'abri de toute influence extérieure.
2. Dans les affaires dont la cour est saisie, toute tentative visant à influencer la décision d'un juge autrement que par la voie de la procédure régulière de la cour est fermement rejetée.
3. Les juges, tant sur le plan institutionnel qu'opérationnel, favorisent et appliquent les mesures et les garanties qui visent à préserver et à accroître l'indépendance de la magistrature.
4. Les juges démontrent qu'ils observent des normes élevées de conduite judiciaire et ils favorisent l'application de telles normes, afin de renforcer la confiance du public, laquelle est la pierre angulaire de l'indépendance des juges.

travaux qui ont abouti aux présents Énoncés, Principes et Commentaires ont été effectués par un comité de travail formé de représentants du Conseil canadien de la magistrature et de la Conférence canadienne des juges. Les vastes consultations qui ont été menées — en outre, auprès de la magistrature — nous assurent que les Énoncés, Principes et Commentaires ont fait l'objet d'un examen minutieux et d'un débat vigoureux. Nous souhaitons que les juges canadiens considèrent que ces Énoncés, Principes et Commentaires représentent leurs aspirations en matière de déontologie; et que, confrontés à l'un ou l'autre des problèmes traités dans ces lignes de conduite, les juges les estiment dignes de respect et leur accordent un examen attentif.

3. De par sa nature, un document comme celui-ci ne saurait prétendre apporter une réponse définitive sur un sujet aussi important et complexe. La publication des présents Énoncés, Principes et Commentaires coïncide avec la création d'un comité consultatif de la magistrature auquel les juges pourront soumettre des questions précises en vue d'obtenir des avis. Ce processus contribuera à l'examen et à l'approfondissement continus des questions traitées dans les Principes, et il permettra de soulever et de traiter de nouveaux problèmes qui n'y sont pas abordés. Fait plus important, le comité consultatif veillera à ce que les juges qui recherchent des conseils puissent aisément recevoir de l'aide.

Commentaires :

1. Les présents Énoncés, Principes et Commentaires sont la plus récente mesure prise au Canada pour fournir des conseils aux juges sur des questions d'ordre déontologique et professionnel, et pour mieux renseigner le public sur les normes élevées que les juges se fixent et s'efforcent d'observer. Ils s'inscrivent dans la foulée des travaux précédents entrepris par M. le juge J. O. Wilson dans son ouvrage *A Book for Judges*, publié en 1980, et par M. le juge Gérald Fauteux dans *Le livre du magistrat*, également publié en 1980. Ils font également suite aux *Propos sur la conduite des juges publiés* en 1991 par le Conseil canadien de la magistrature et au texte du professeur Beverley Smith intitulé *Professional Conduct for Lawyers and Judges* (1998). Bien qu'elle s'inspire largement de ces sources inestimables, la présente publication représente de loin l'exposé le plus complet jamais publié au Canada en la matière. Le présent document ne peut toutefois prétendre à l'exhaustivité; la réalité présente une multitude de situations et nombre de celles-ci lui échapperont. Les sources susmentionnées, ainsi que celles indiquées au Commentaire 2 ci-dessous, demeureront utiles aux juges canadiens.
2. Comme l'indiquent les références que contient le texte, de nombreuses sources ont été consultées lors de la préparation du présent document. Celles-ci comprennent non seulement les ouvrages canadiens, mais aussi le code de déontologie judiciaire qui régit la magistrature fédérale des États-Unis, le Model Code of Judicial Conduct (1990) de l'American Bar Association ainsi que des traités de doctrine et des décisions concernant la conduite judiciaire au Canada, au Royaume-Uni, en Australie et aux États-Unis. Mentionnons en particulier Judicial Ethics in Australia de J. B. Thomas (2d, 1997), Judicial Conduct and Ethics de J. Shaman et al. (2d, 1995) et Judges on Trial de S. Shetreet (1976). Bien que toutes ces sources soient utiles, le présent document est uniquement l'œuvre de juges canadiens. Les

3. L'indépendance de la magistrature est un droit reconnu à tout Canadien. Les juges doivent être libres et paraître libres de juger avec intégrité et impartialité, sur le fondement du droit et de la preuve présentée, sans faire l'objet de pressions ou d'influences extérieures et sans craindre l'intervention de qui que ce soit. Les Énoncés, Principes et Commentaires ne sauraient limiter ni restreindre en aucune façon l'indépendance de la magistrature, et ils n'entendent pas le faire; s'ils le faisaient, ils iraient à l'encontre de l'objectif même du présent document : favoriser le droit de tous et chacun à une justice appliquée de façon uniforme et impartiale par des juges indépendants et justes. Comme il est indiqué au chapitre sur l'indépendance de la magistrature, les juges sont tenus de défendre le principe de l'indépendance de la magistrature, non parce qu'il constitue un privilège rattaché à leur charge, mais parce que, aux termes de la Constitution et des droits qu'elle garantit à chaque citoyen, les litiges sont entendus et tranchés par des juges impartiaux.

1. OBJET

Énoncé : *Le présent document a pour objet de fournir des conseils d'ordre déontologique aux juges nommés par le gouvernement fédéral.*

Principes :

1. Les Énoncés, Principes et Commentaires exposent certaines normes très élevées que les juges s'efforcent de respecter. Il s'agit de principes rationnels, qui s'appliquent en fonction des circonstances pertinentes et qui sont comparables avec les exigences du droit et de l'indépendance de la magistrature. Le fait que ces Énoncés, Principes et Commentaires décrivent une conduite idéale n'exclut pas la possibilité que des juges, pour des motifs raisonnables, manifestent certains désaccords avec le présent document quant à leur application. Le caractère élevé de ces lignes directrices n'implique pas non plus qu'il y aurait inconduite judiciaire si l'on s'en écartait.

2. Les Énoncés, Principes et Commentaires se veulent de simples recommandations. L'objectif visé est, d'une part, d'aider les juges à trouver des réponses aux épineuses questions d'ordre déontologique et professionnel auxquelles ils sont confrontés, et, d'autre part, d'aider le public à mieux comprendre le rôle des juges. Ils ne constituent pas un code ou une liste de comportements prohibés et ils ne doivent pas être utilisés comme tel. Ils n'énoncent pas de normes définissant l'inconduite judiciaire.

Le masculin est utilisé à la seule fin d'alléger le texte.

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PRÉFACE

La capacité de l'appareil judiciaire canadien de fonctionner efficacement et d'offrir le genre de justice dont les Canadiens et Canadiennes ont besoin et qu'ils méritent repose en grande partie sur les normes déontologiques de nos juges.

Cette question importe grandement au Conseil canadien de la magistrature. L'adoption d'un cadre de référence déontologique généralement accepté aide le Conseil à s'acquitter de ses responsabilités et permet de s'assurer que les juges et le public connaissent les principes qui devraient guider les juges dans leur vie personnelle et professionnelle.

Depuis qu'il a été constitué en 1971, le Conseil a soutenu activement la magistrature au moyen d'outils pour aider à améliorer l'exercice de la justice dans notre pays. La publication des *Principes de déontologie judiciaire* en 1998 a été une importante réalisation à cet égard.

Nous sommes toujours reconnaissants au comité de travail que le Conseil a créé en 1994 et aux nombreux experts qui ont apporté leur collaboration afin de donner aux juges canadiens un outil essentiel pour rendre la justice dans notre pays. Le Conseil canadien de la magistrature est heureux de sanctionner à nouveau les normes élevées de conduite qui sont définies dans ces principes.

La très honorable Beverley McLachlin
Juge en chef du Canada

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CONSEIL CANADIEN DE LA MAGISTRATURE PRINCIPES DE DÉONTOLOGIE JUDICIAIRE

ANNEXE « E »

PRÉJUDICE INJUSTIFIÉ

(3) Le paragraphe (2) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

DIRECTIVES ET RÈGLES DE PROCÉDURE

(4) Lorsqu'il traite des requêtes prévues au présent article, le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

PARTICIPATION

(5) Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe (2) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

LA COURONNE EST LIÉE

(6) L'ordonnance lie la Couronne.

ARTICLE 47

RETRAITE

(1) Chaque juge provincial prend sa retraite à l'âge de soixante-cinq ans.

Idem

(2) Malgré le paragraphe (1), le juge qui a été nommé magistrat, juge d'un tribunal de la famille et de la jeunesse ou protonotaire à plein temps avant le 2 décembre 1968 prend sa retraite à l'âge de soixante-dix ans.

MAINTIEN EN FONCTION DES JUGES

(3) Le juge qui atteint l'âge de la retraite peut, avec l'approbation annuelle du juge en chef de la Cour de justice de l'Ontario, continuer d'exercer ses fonctions en tant que juge à plein temps ou à temps partiel jusqu'à l'âge de soixante-quinze ans.

IDEM, JUGES PRINCIPAUX RÉGIONAUX

(4) Le juge principal régional de la Cour de justice de l'Ontario qui est toujours en fonction à l'âge de la retraite peut, avec l'approbation annuelle du juge en chef, continuer

CRITÈRES

(7) Les décisions visées aux paragraphes (3), (4), (5) et (6) sont prises conformément aux critères établis par le juge en chef et approuvés par le Conseil de la magistrature.

(8) Si la date de la retraite prévue aux paragraphes (1) à (5) est antérieure, dans l'année civile, au jour de l'entrée en vigueur de l'article 16 de la Loi de 1994 modifiant des lois *en ce qui concerne les tribunaux judiciaires* et que l'approbation annuelle est en suspens ce jour-là, le maintien en fonction du juge est traité conformément à l'article 44 de la présente loi tel qu'il existait immédiatement avant ce jour-là.



IDEM, JUGE EN CHEF ET JUGES EN CHEF ADJOINTS

47 (5) Le juge en chef ou le juge en chef adjoint de la Cour de justice de l'Ontario qui est toujours en fonction à l'âge de la retraite peut, avec l'approbation annuelle du Conseil de la magistrature, continuer d'exercer ses fonctions jusqu'à l'expiration de son mandat ou jusqu'à l'âge de soixante-quinze ans, selon celui de ces deux événements qui se produit en premier.

Idem

(6) Si le Conseil de la magistrature n'approuve pas le maintien en fonction d'un juge en chef ou d'un juge en chef adjoint aux termes du paragraphe (5), celui-ci peut, avec l'approbation du Conseil de la magistrature et non pas comme l'énonce le paragraphe (3), continuer d'exercer les fonctions de juge provincial.

1 Un des membres du Conseil de la magistrature

qui est un juge provincial est remplacé par un juge provincial qui a été affecté à la Cour provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le juge qui doit remplacer ce juge.

2 Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

3. Les recommandations du sous-comité concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, à qui les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

APPLICATION DES ART. 51.9, 51.10 ET 51.11

(5) L'article 51.9, qui porte sur les normes de conduite des juges provinciaux, l'article 51.10, qui porte sur la formation continue de ces derniers, et l'article 51.11, qui porte sur l'évaluation de leur rendement, ne s'appliquent aux juges provinciaux à qui s'applique le présent article que si le juge en chef de la Cour supérieure de justice y consent. Voir :

ARTICLE 45

REQUÊTE

45 (1) Le juge provincial qui croit ne pas être en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à moins qu'il ne soit tenu compte de ses besoins peut présenter une requête au Conseil de la magistrature pour que soit rendue l'ordonnance prévue au paragraphe (2).

OBLIGATION DU CONSEIL DE LA MAGISTRATURE

(2) S'il conclut que le juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à moins qu'il ne soit tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

2 Les plaintes sont renvoyées au juge en chef de la

Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

3 Les recommandations du sous-comité au sujet de la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, auquel les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires

Idem

(7) L'article 51.9, qui traite des normes de conduite des juges provinciaux, l'article 51.10, qui traite de leur formation continue, et l'article 51.11, qui traite de l'évaluation de leur rendement, ne s'appliquent aux protonotaires que si le juge en chef de la Cour supérieure de justice y consent.

(8) Les protonotaires reçoivent les mêmes traitements, prestations de retraite et autres avantages sociaux et allocations que les juges provinciaux reçoivent aux termes de la convention cadre énoncée à l'annexe de la présente loi

ARTICLE 87.1

JUGES DE LA COUR DES PETITES CRÉANCES

87.1 (1) Le présent article s'applique aux juges provinciaux qui ont été affectés à la Cour provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990.

(2) Le juge en chef de la Cour supérieure de justice exerce, à l'égard des juges provinciaux à qui s'applique le présent article, le pouvoir du juge en chef de la Cour de justice de l'Ontario qui est prévu aux paragraphes 44 (1) et (2).

MAINTIEN EN FONCTION

(3) Le droit d'un juge provincial à qui s'applique le présent article de continuer d'exercer ses fonctions en vertu du paragraphe 47 (3) est assujéti à l'approbation du juge en chef de la Cour supérieure de justice, qui prend la décision conformément aux critères qu'il a établis et que le Conseil de la magistrature a approuvés.

PLAINTES

(4) Lorsque le Conseil de la magistrature traite une plainte portée contre un juge provincial à qui s'applique le présent article, les dispositions spéciales suivantes s'appliquent :

ANNEXE « D »

ARTICLE 51.11

EVALUATION DU RENDEMENT

51.11 (1) Le juge en chef de la Cour de justice de l'Ontario peut élaborer un programme d'évaluation du rendement des juges provinciaux et le mettre en oeuvre une fois qu'il a été examiné et approuvé par le Conseil de la magistrature.

OBLIGATION DU JUGE EN CHEF

(2) Le juge en chef rend public le programme d'évaluation du rendement une fois qu'il a été approuvé par le Conseil de la magistrature.

OBJECTIFS

(3) Les objectifs suivants constituent certains des objectifs que le juge en chef peut chercher à réaliser en élaborant un programme d'évaluation du rendement des juges :

1. Accroître le rendement individuel des juges et le rendement des juges dans leur ensemble.
2. Déterminer les besoins en formation continue.
3. Aider à l'affectation des juges.
4. Déterminer les possibilités de perfectionnement professionnel

PORTÉE DE L'ÉVALUATION

(4) Dans l'évaluation du rendement d'un juge, la décision prise dans un cas particulier ne doit pas être prise en considération.

CARACTÈRE CONFIDENTIEL

(5) L'évaluation du rendement d'un juge est confidentielle et n'est divulguée qu'au juge, à son juge principal régional et à la personne ou les personnes qui font l'évaluation.

NON-ADMISSIBILITÉ, EXCEPTION

(6) L'évaluation du rendement d'un juge ne doit pas être admise en preuve devant le Conseil de la magistrature ni devant un tribunal, qu'il soit judiciaire, quasi-judiciaire ou administratif, sauf si le juge y consent.

APPLICATION DES PAR. (5) ET (6)

(7) Les paragraphes (5) et (6) s'appliquent à tout ce qui est compris dans l'évaluation du rendement d'un juge ainsi qu'à tous les renseignements recueillis relativement à l'évaluation.

ARTICLE 51.12

CONSULTATION

51.12 Lorsqu'il fixe des normes de conduite en vertu de l'article 51.9, élabore un plan de formation continue aux termes de l'article 51.10 et élabore un programme d'évaluation du rendement en vertu de l'article 51.11, le juge en chef de la Cour de justice de l'Ontario consulte les juges de cette cour ainsi que d'autres personnes s'il l'estime approprié.

ARTICLE 87

PROTONOTAIRES

87 (1) Les personnes qui étaient protonotaires de la Cour suprême avant le 1^{er} septembre 1990 sont protonotaires de la Cour supérieure de justice.

(2) Les protonotaires ont la compétence que leur attribuent les règles de pratique dans les instances devant la Cour supérieure de justice.

APPLICATION DES ART. 44 À 51.12

(3) Les articles 44 à 51.12 s'appliquent, avec les adaptations nécessaires, aux protonotaires de la même manière qu'aux juges provinciaux.

(4) Le juge en chef de la Cour supérieure de justice exerce, à l'égard des protonotaires, le pouvoir du juge en chef de la Cour de justice de l'Ontario qui est prévu aux paragraphes 44 (1) et (2).

Idem

(5) Le droit d'un protonotaire de continuer d'exercer ses fonctions en vertu du paragraphe 47 (3) est assujéti à l'approbation du juge en chef de la Cour supérieure de justice, qui rend une décision à cet effet conformément aux critères qu'il a établis et que le Conseil de la magistrature a approuvés.

Idem

(6) Lorsque le Conseil de la magistrature traite une plainte portée contre un protonotaire, les dispositions spéciales suivantes s'appliquent :

1.

Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un protonotaire. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le protonotaire qui doit remplacer le juge.

(3) Les objectifs suivants constituent certains des objectifs que le juge en chef peut chercher à réaliser en mettant en application les normes de conduite des juges :

OBJECTIFS

(2) Le juge en chef veille à ce que les normes de conduite soient mises à la disposition du public, en français et en anglais, une fois qu'elles ont été approuvées par le Conseil de la magistrature.

OBLIGATION DU JUGE EN CHEF

1. Maintenir et développer la compétence professionnelle.
2. Maintenir et développer la sensibilisation aux questions sociales.
3. Promouvoir le développement personnel.

(3) La formation continue des juges vise les objectifs suivants :

OBJECTIFS

(2) Le juge en chef veille à ce que le plan de formation continue soit mis à la disposition du public, en français et en anglais, une fois qu'il a été approuvé par le Conseil de la magistrature.

OBLIGATION DU JUGE EN CHEF

(2) L'Ontario élabore un plan de formation continue des juges provinciaux et le met en oeuvre une fois qu'il a été examiné et approuvé par le Conseil de la magistrature.

FORMATION CONTINUE

ARTICLE 51.10

1. Reconnaître l'autonomie de la magistrature.
2. Maintenir la qualité supérieure du système judiciaire et assurer l'administration efficace de la justice.
3. Favoriser l'égalité au sein du système judiciaire et le sentiment d'inclusion à celui-ci.
4. Faire en sorte que la conduite des juges atteste le respect qui leur est témoigné.
5. Souligner la nécessité d'assurer, par la formation continue, le perfectionnement professionnel des juges ainsi que le développement personnel de leur sensibilisation aux questions sociales.

(5) Une plainte portée contre un juge provincial devant le Conseil de la magistrature avant le jour de l'entrée en vigueur de l'article 16 de la Loi de 1994 modifiant des lois *en ce qui concerne les tribunaux judiciaires* et examinée à une réunion du Conseil de la magistrature avant ce jour-là est traitée par celui-ci tel qu'il était constitué immédiatement avant ce jour-là, conformément à l'article 49 de la présente loi tel qu'il existait immédiatement avant ce jour-là.

DISPOSITION TRANSITOIRE

(4) Le présent article s'applique aux juges provinciaux qui n'ont pas encore atteint l'âge de la retraite et aux juges provinciaux dont le maintien en fonction après avoir atteint l'âge de la retraite a été approuvé en vertu du paragraphe 47 (3), (4) ou (5).

APPLICATION

(3) Le lieutenant-gouverneur peut prendre un décret en vue de la destitution d'un juge provincial prévue au présent article, sur demande de l'Assemblée.

DECRET DE DESTITUTION

(2) Le procureur général dépose la recommandation devant l'Assemblée. Si celle-ci ne siège pas, il la dépose dans les quinze jours qui suivent le début de la session suivante.

DÉPÔT DE LA RECOMMANDATION

1. Le plaignant ou le témoin à la demande duquel une ordonnance a été rendue en vertu du paragraphe (9).
2. Le juge, si l'audience a été tenue à huis clos, n'ordonne que le nom du juge soit divulgué.

INTERDICTION PERMANENTE DE PUBLIER

(20) Si une ordonnance a été rendue en vertu du paragraphe (10) et que le Conseil de la magistrature rejette la plainte en concluant qu'elle n'était pas fondée, le juge ne doit pas être identifié dans le rapport sans son consentement et le Conseil ordonne que les renseignements relatifs à la plainte qui pourraient identifier le juge ne doivent jamais être rendus publics sans le consentement de celui-ci.

INDÉMNISATION

51.7 (1) Lorsqu'il a traité une plainte portée contre un juge provincial, le Conseil de la magistrature étudie la question de savoir si le juge devrait être indemnisé pour les frais pour services juridiques qu'il a engagés relativement à la démarche suivie aux termes des articles 51.4, 51.5 et 51.6 et du présent article en ce qui concerne la plainte.

EXAMEN DE LA QUESTION JOINT À L'AUDIENCE

(2) S'il tient une audience sur la plainte, le Conseil de la magistrature lui joint l'examen de la question de l'indemnisation.

EXAMEN PUBLIC OU À HUIS CLOS

(3) L'examen de la question de l'indemnisation par le Conseil de la magistrature est ouvert au public s'il y a eu une audience publique sur la plainte; sinon, l'examen se fait à huis clos.

RECOMMANDATION

(4) S'il est d'avis que le juge devrait être indemnisé, le Conseil de la magistrature fait une recommandation en ce sens au procureur général, laquelle recommandation indique le montant de l'indemnité.

(5) Si la plainte est rejetée à l'issue d'une audience, le Conseil de la magistrature recommande au procureur général que le juge soit indemnisé pour ses frais pour services juridiques et indique le montant de l'indemnité.

DIVULGATION DU NOM

(6) Dans sa recommandation au procureur général, le Conseil de la magistrature fournit le nom du juge, mais le procureur général ne doit pas le divulguer à moins qu'il n'y ait eu une audience publique sur la plainte ou que le Conseil n'ait, par ailleurs, rendu public le nom du juge.

MONTANT DE L'INDÉMNITÉ

(7) Le montant de l'indemnité recommandé aux termes du paragraphe (4) ou (5) peut se rapporter à tout ou partie des frais pour services juridiques du juge et est calculé selon un taux pour services juridiques qui ne dépasse pas le taux maximal normalement prévu par le gouvernement de l'Ontario pour des services similaires.

VERSEMENT

(8) Le procureur général verse l'indemnité au juge conformément à la recommandation.

ARTICLE 51.8

DESTITUTION MOTIVÉE

51.8 (1) Un juge provincial ne peut être destitué que si les conditions suivantes sont réunies :

- a) une plainte a été portée à son sujet devant le Conseil de la magistrature;
- b) le Conseil de la magistrature, à l'issue d'une audience tenue aux termes de l'article 51.6, recommande au procureur général la destitution du juge en raison du fait qu'il est devenu incapable de remplir convenablement ses fonctions ou inhabile pour l'une des raisons suivantes :

- (i) il est inapte, en raison d'une invalidité, à s'acquitter des obligations essentielles de son poste (si une ordonnance pour qu'il soit tenu compte de ses besoins ne remédierait pas à l'invalidité ou ne pourrait pas être rendue parce qu'elle causerait un préjudice injustifié à la personne à laquelle il incomberait de tenir compte de ces besoins, ou a été rendue mais n'a pas remédié à l'invalidité),
- (ii) il a eu une conduite incompatible avec l'exercice convenable de ses fonctions,
- (iii) il n'a pas rempli les fonctions de sa charge.

DIVULGATION DANS DES CIRCONSTANCES

EXCEPTIONNELLES

(8) Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

ORDONNANCES INTERDISANT LA PUBLICATION

(9) Si la plainte porte sur des allégations d'inconduite d'ordre sexuel ou de harcèlement sexuel, le Conseil de la magistrature interdit, à la demande d'un plaignant ou d'un autre témoin qui déclare avoir été victime d'une conduite semblable par le juge, la publication de renseignements qui pourraient identifier le plaignant ou le témoin, selon le cas.

PUBLICATION INTERDITE

(10) Dans des circonstances exceptionnelles et conformément aux critères établis aux termes du paragraphe 51.1 (1), le Conseil de la magistrature peut rendre une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte.

MESURES

(11) Une fois qu'il a terminé l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclu ou non que la plainte n'est pas fondée ou, s'il conclut qu'il y a eu inconduite de la part du juge, il peut, selon le cas :

a) donner un avertissement au juge;

b) réprimander le juge;

c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;

d) ordonner que le juge prenne des dispositions précises, telles que suivre une formation ou un traitement, comme condition pour continuer de siéger à titre de juge;

e) suspendre le juge, avec rémunération, pendant une période quelle qu'elle soit;

f) suspendre le juge, sans rémunération mais avec avantages sociaux, pendant une période maximale de trente jours;

g) recommander au procureur général la destitution du juge conformément à l'article 51.8.

idem

(12) Le Conseil de la magistrature peut adopter toute combinaison des mesures énoncées aux alinéas (11) a) à f).

INVALIDITÉ

(13) S'il conclut que le juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste, mais qu'il serait en mesure de le faire s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

APPLICATION DU PAR. (13)

(14) Le paragraphe (13) s'applique si :

a) d'une part, un facteur de la plainte était que l'invalidité influe sur le fait que le juge n'est pas en mesure de s'acquitter des obligations essentielles du poste;

b) d'autre part, le Conseil de la magistrature rejette la plainte ou prend des mesures prévues aux alinéas (11) a) à f).

PREJUDICE INJUSTIFIÉ

(15) Le paragraphe (13) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

PARTICIPATION

(16) Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe (13) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

LA COURONNE EST LIÉE

(17) Une ordonnance rendue aux termes du paragraphe (13) lie la Couronne.

RAPPORT AU PROCUREUR GÉNÉRAL

(18) Le Conseil de la magistrature peut présenter au procureur général un rapport sur la plainte, l'enquête, l'audience et la décision, sous réserve d'une ordonnance rendue en vertu du paragraphe 49 (24). Le procureur général peut rendre le rapport public s'il est d'avis qu'il y va de l'intérêt public.

NON-IDENTIFICATION DE PERSONNES

(19) Les personnes suivantes ne doivent pas être identifiées dans le rapport :

ARTICLE 51.6

DÉCISION DU CONSEIL

51.6 (1) Lorsque le Conseil de la magistrature décide de tenir une audience, il le fait conformément au présent article.

APPLICATION DE LA LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

(2) La Loi sur l'exercice des compétences légales, à l'exception de l'article 4 et du paragraphe 9 (1), s'applique à l'audience.

RÈGLES DE PROCÉDURE

(3) Les règles de procédure que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1) s'appliquent à l'audience.

COMMUNICATION CONCERNANT L'OBJET DE L'AUDIENCE

(4) Les membres du Conseil de la magistrature qui participent à l'audience ne doivent pas communiquer ni directement ni indirectement avec une partie, un avocat, un mandataire ou une autre personne, pour ce qui est de l'objet de l'audience, sauf si toutes les parties et leurs avocats ou mandataires ont été avisés et ont l'occasion de participer.

EXCEPTION

(5) Le paragraphe (4) n'a pas pour effet d'empêcher le Conseil de la magistrature d'engager un avocat pour se faire aider conformément au paragraphe 49 (21), auquel cas la nature des conseils données par l'avocat est communicative aux parties pour leur permettre de présenter des observations quant au droit applicable.

PARTIES

(6) Le Conseil de la magistrature détermine quelles sont les parties à l'audience.

EXCEPTION, AUDIENCES À HUIS CLOS

(7) Dans des circonstances exceptionnelles, le Conseil de la magistrature peut tenir la totalité ou une partie de l'audience à huis clos s'il décide, conformément aux critères établis aux termes du paragraphe 51.1 (1), que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique.

RAPPORT

(9) S'il approuve la décision prise au sujet de la plainte, le Conseil de la magistrature peut rendre publics les résultats de la médiation en fournissant un résumé de la plainte mais sans identifier le plaignant ni le juge.

RENOI AU CONSEIL

(10) À n'importe quel moment pendant ou après la médiation, le plaignant ou le juge peut renvoyer la plainte au Conseil de la magistrature, lequel examine la question, à huis clos, et peut, selon le cas :

- a) rejeter la plainte;
- b) renvoyer la plainte au juge en chef, en assortissant ou non le renvoi de conditions comme le prévoit le paragraphe 51.4 (15);
- c) tenir une audience aux termes de l'article 51.6.

NON-APPLICATION DE LA LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

(11) La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature prévus aux paragraphes (8) et (10).

AVIS AU JUGE ET AU PLAIGNANT

(12) Une fois qu'il s'est prononcé conformément au paragraphe (8) ou (10), le Conseil de la magistrature munit sa décision au juge et au plaignant, en exposant brièvement les motifs dans le cas d'un rejet.

DIRECTIVES ET RÈGLES DE PROCÉDURE

(13) Lorsqu'il étudie des rapports, examine des questions et se prononce aux termes des paragraphes (8) et (10), le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

- Idem
- (3) Sans préjudice de la portée générale du paragraphe (2), les critères doivent prévoir que les plaintes sont exclues de la procédure de médiation dans les circonstances suivantes :
1. Il existe un déséquilibre important du pouvoir entre le plaignant et le juge; ou il existe un écart si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable.
2. La plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motif illicite de discrimination ou de harcèlement prévu dans une disposition du *Code des droits de la personne*.
3. L'intérêt public requiert la tenue d'une audience sur la plainte.

CONSEILS JURIDIQUES

- (4) Une plainte ne peut être renvoyée à un médiateur que si le plaignant et le juge y consentent, s'ils peuvent obtenir des conseils juridiques de personnes indépendantes et s'ils en ont eu l'occasion.

MÉDIATEUR QUALIFIÉ

- (5) Le médiateur doit être une personne qui a reçu une formation en médiation et qui n'est pas un juge. Si la médiation est menée de concert par deux personnes ou plus, au moins une de ces personnes doit satisfaire à ces exigences.

IMPARTIALITÉ

- (6) Le médiateur est impartial.

EXCLUSION

- (7) Aucun des membres du sous-comité qui a enquêté sur la plainte et aucun des membres du Conseil de la magistrature qui a traité la plainte en vertu du paragraphe 51.4 (17) ou (18) ne doit participer à la médiation.

EXAMEN PAR LE CONSEIL

- (8) Le médiateur présente un rapport sur les résultats de la médiation, sans identifier le plaignant ni le juge qui fait l'objet de la plainte, au Conseil de la magistrature, lequel étudie, à huis clos, le rapport et peut :
- a) approuver la décision prise au sujet de la plainte;
- b) si la médiation n'aboutit pas à une décision ou si le Conseil est d'avis que la décision n'est pas dans l'intérêt public :

- a) tenir une audience aux termes de l'article 51.6;

- b) rejeter la plainte;

- c) renvoyer la plainte au juge en chef, en assortissant ou non le renvoi de conditions comme le prévoit le paragraphe (15);

- d) renvoyer la plainte à un médiateur conformément à l'article 51.5.

NON-APPLICATION DE LA LOI SUR

L'EXERCICE DES COMPÉTENCES LÉGALES

- (19) La *Loi sur l'exercice des compétences légales* ne s'applique pas aux travaux du Conseil de la magistrature prévus aux paragraphes (17) et (18).

AVIS AU JUGE ET AU PLAIGNANT

- (20) Une fois qu'il s'est prononcé conformément au paragraphe (17) ou (18), le Conseil de la magistrature communique sa décision au juge et au plaignant, en exposant brièvement les motifs dans le cas d'un rejet.

DIRECTIVES ET RÈGLES DE PROCÉDURE

- (21) Lorsqu'il mène des enquêtes, fait des recommandations en vertu du paragraphe (8) et se prononce aux termes des paragraphes (13) et (15), le sous-comité se conforme aux directives et aux règles de procédure que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1).

- (22) Lorsqu'il examine des rapports et des plaintes et se prononce aux termes des paragraphes (17) et (18), le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

ARTICLE 51.5

MÉDIATION

- 51.5 (1) Le Conseil de la magistrature peut établir une procédure de médiation pour les plaignants et pour les juges qui font l'objet de plaintes.

CRITÈRES

- (2) Si le Conseil de la magistrature établit une procédure de médiation, il doit aussi établir des critères pour exclure de la procédure les plaintes qui ne se prêtent pas à la médiation.

ROTATION DES MEMBRES

(2) Les membres admissibles du Conseil de la magistrature siègent tous au sous-comité par rotation.

REJET

(3) Le sous-comité rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure.

ENQUÊTE

(4) Si la plainte n'est pas rejetée aux termes du paragraphe (3), le sous-comité mène les enquêtes qu'il estime appropriées.

EXPERTS

(5) Le sous-comité peut engager des personnes, y compris des avocats, pour l'aider dans la conduite de son enquête.

ENQUÊTE À HUIS CLOS

(6) L'enquête est menée à huis clos.

NON-APPLICATION DE LA LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

(7) La Loi sur l'exercice des compétences légales ne s'applique pas aux activités du sous-comité.

RECOMMANDATIONS PROVISOIRES

(8) Le sous-comité peut recommander à un juge principal régional la suspension, avec rémunération, du juge qui fait l'objet de la plainte ou l'affectation de celui-ci à un autre endroit, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

Idem

(9) La recommandation est présentée au juge principal régional nommé pour la région à laquelle le juge est affecté, sauf si le juge principal régional est membre du Conseil de la magistrature, auquel cas la recommandation est présentée à un autre juge principal régional.

POUVOIR DU JUGE PRINCIPAL RÉGIONAL

(10) Le juge principal régional peut suspendre ou réaffecter le juge selon la recommandation du sous-comité.

POUVOIR DISCRÉTIONNAIRE

(11) Le pouvoir discrétionnaire qu'a le juge principal régional d'accepter ou de rejeter la recommandation du sous-comité n'est pas assujéti à l'administration ni à la surveillance de la part du juge en chef.

EXCEPTION : PLAINTES DÉPOSÉES CONTRE CERTAINS JUGES

(12) Si la plainte est déposée contre le juge en chef de la Cour de justice de l'Ontario, un juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional qui est membre du Conseil de la magistrature, toute recommandation prévue au paragraphe (8) en ce qui concerne la plainte est présentée au juge en chef de la Cour supérieure de justice, qui peut suspendre ou réaffecter le juge selon la recommandation du sous-comité.

DÉCISION DU SOUS-COMITÉ

(13) Lorsqu'il a terminé son enquête, le sous-comité, selon le cas :

- a) rejette la plainte;
- b) renvoie la plainte au juge en chef;
- c) renvoie la plainte à un médiateur conformément à l'article 51.5;
- d) renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience aux termes de l'article 51.6.

Idem

(14) Le sous-comité ne peut rejeter la plainte ou la renvoyer au juge en chef ou à un médiateur que si les deux membres en conviennent, sinon, la plainte doit être renvoyée au Conseil de la magistrature.

CONDITIONS DU RENVOI AU JUGE EN CHEF

(15) Le sous-comité peut, si le juge qui fait l'objet de la plainte y consent, assortir de conditions la décision de renvoyer la plainte au juge en chef.

RAPPORT

(16) Le sous-comité présente au Conseil de la magistrature un rapport sur sa décision concernant toute plainte qui est rejetée ou renvoyée au juge en chef ou à un médiateur, sans identifier le plaignant ni le juge qui fait l'objet de la plainte.

POUVOIR DU CONSEIL DE LA MAGISTRATURE

(17) Le Conseil de la magistrature examine le rapport, à huis clos, et peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte.

Idem

(18) Le Conseil de la magistrature examine, à huis clos, chaque plainte que le sous-comité lui renvoie et peut, selon le cas :



Idem
(2) Les plaintes contre des juges provinciaux peuvent être portées en français ou en anglais.

Idem
(3) L'audience prévue à l'article 51.6 est menée en anglais, mais le plaignant ou le témoin qui parle français ou le juge qui fait l'objet d'une plainte et qui parle français a droit, sur demande, à ce qui suit :

a) avant l'audience, une traduction en français des documents qui sont en anglais et qui seront examinées à l'audience;

b) les services d'un interprète à l'audience;

c) l'interprétation simultanée en français des parties de l'audience qui se déroulent en anglais.

Idem
(4) Le paragraphe (3) s'applique également aux médiations menées aux termes de l'article 51.5 et à l'examen qu'a effectué le Conseil de la magistrature aux termes de l'article 51.7 en ce qui concerne la question de l'indemnisation, si le paragraphe 51.7 (2) s'applique.

AUDIENCE OU MÉDIATION BILINGUE

(5) Le Conseil de la magistrature peut ordonner qu'une audience ou une médiation à laquelle s'applique le paragraphe (3) soit bilingue s'il est d'avis qu'elle peut être menée convenablement de cette manière.

PARTIE D'AUDIENCE OU DE MÉDIATION

(6) Un ordre prévu au paragraphe (5) peut s'appliquer à une partie de l'audience ou de la médiation, auquel cas les paragraphes (7) et (8) s'appliquent avec les adaptations nécessaires.

Idem
(7) Au cours d'une audience ou d'une médiation bilingue :

a) les témoignages oraux et les observations orales peuvent être présentés en français ou en anglais et ils sont consignés dans la langue de présentation;

b) les documents peuvent être déposés dans l'une ou l'autre langue;

c) dans le cas d'une médiation, les discussions peuvent avoir lieu dans l'une ou l'autre langue;

d) les motifs d'une décision ou le rapport du médiateur, selon le cas, peuvent être rédigés dans l'une ou l'autre langue.

EXAMEN PAR UN SOUS-COMITÉ

51.4 (1) La plainte reçue par le Conseil de la magistrature est examinée par un sous-comité du Conseil qui se compose d'un juge provincial autre que le juge en chef et d'une personne qui n'est ni juge ni avocat.

ARTICLE 51.4

(5) À la demande de toute personne, le Conseil de la magistrature peut confirmer ou nier qu'il a été saisi d'une plainte donnée.

RENSEIGNEMENTS SUR LA PLAINTÉ

(4) Une fois qu'une plainte a été portée devant lui, le Conseil de la magistrature est chargé de la conduite de l'affaire.

CONDUITE DE L'AFFAIRE

Idem
(3) Si une allégation d'inconduite contre un juge provincial est présentée à un autre juge ou au procureur général, cet autre juge ou le procureur général, selon le cas, fournit à l'auteur de l'allégation des renseignements sur le rôle du Conseil de la magistrature au sein du système judiciaire et sur la façon de porter plainte, et le renvoie au Conseil de la magistrature.

Idem
(2) Si une allégation d'inconduite contre un juge provincial est présentée à un membre du Conseil de la magistrature, elle est traitée comme une plainte portée devant celui-ci.

Idem
(1) Toute personne peut porter devant le Conseil de la magistrature une plainte selon laquelle il y aurait eu inconduite de la part d'un juge provincial.

PLAINTES

ARTICLE 51.3

(8) Lors d'une audience ou d'une médiation bilingue, si le plaignant ou le juge qui fait l'objet de la plainte ne parle qu'une des deux langues, il a droit, sur demande, à l'interprétation simultanée des témoignages, des observations ou des discussions qui ont lieu dans l'autre langue et à une traduction des documents déposés ou des motifs ou rapports rédigés dans l'autre langue.

ARTICLE 51

INFORMATION AU PUBLIC

51 (1) Le Conseil de la magistrature fournit, dans les palais de justice et ailleurs, de l'information à son sujet et au sujet du système judiciaire, y compris des renseignements sur ce que les membres du public peuvent faire pour obtenir de l'aide en vue de porter plainte.

Idem
(2) Lorsqu'il fournit de l'information, le Conseil de la magistrature met l'accent sur l'élimination des obstacles culturels et linguistiques et sur l'importance de tenir compte des besoins des personnes handicapées.

AIDE AU PUBLIC

(3) Au besoin, le Conseil de la magistrature prend des dispositions afin que les membres du public reçoivent de l'aide pour préparer des documents en vue de porter plainte.

ACCÈS PAR TÉLÉPHONE

(4) Le Conseil de la magistrature offre, à l'échelle de la province, un service téléphonique gratuit d'accès à de l'information à son sujet, notamment sur son rôle au sein du système judiciaire, y compris un service pour sourds.

PERSONNES HANDICAPÉES

(5) Afin de permettre aux personnes handicapées de participer efficacement à la procédure à suivre pour les plaintes, le Conseil de la magistrature fait en sorte qu'il soit tenu compte de leurs besoins, à ses frais, à moins que cela ne lui cause un préjudice injustifié, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

RAPPORT ANNUEL

(6) Après la fin de chaque année, le Conseil de la magistrature présente au procureur général un rapport annuel, en français et en anglais, sur ses activités, y compris, à l'égard de toutes les plaintes reçues ou traitées pendant l'année, un sommaire de la plainte, les conclusions et un exposé de la décision. Toutefois, le rapport ne doit pas contenir de renseignements qui pourraient identifier le juge ou le plaignant.

DÉPÔT

(7) Le procureur général présente le rapport annuel au lieutenant-gouverneur en conseil et le dépose alors devant l'Assemblée.

ARTICLE 51.1

RÈGLES

51.1 (1) Le Conseil de la magistrature établit et rend publiques ses propres règles de procédure, y compris ce qui suit :

1. Des directives et les règles de procédure pour l'application de l'article 45.
2. Des directives et les règles de procédure pour l'application du paragraphe 51.4 (21).
3. Des directives et les règles de procédure pour l'application du paragraphe 51.4 (22).
4. S'il y a lieu, des critères pour l'application du paragraphe 51.5 (2).
5. S'il y a lieu, des directives et les règles de procédure pour l'application du paragraphe 51.5 (13).
6. Les règles de procédure pour l'application du paragraphe 51.6 (3).
7. Des critères pour l'application du paragraphe 51.6 (7).
8. Des critères pour l'application du paragraphe 51.6 (8).
9. Des critères pour l'application du paragraphe 51.6 (10).

LOI SUR LES RÈGLEMENTS

(2) La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

LOI SUR L'EXERCICE DES COMPÉTENCES

LÉGALES

(3) Les articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales ne s'appliquent pas au Conseil de la magistrature.

ARTICLE 51.2

LANGUES OFFICIELLES DANS LES TRIBUNAUX

51.2 (1) L'information fournie aux termes des paragraphes 51 (1), (3) et (4) et tout ce qui est rendu public aux termes du paragraphe 51.1 (1) le sont en français et en anglais.

a) le juge en chef de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

50 (1) Si le juge en chef de la Cour de justice de l'Ontario fait l'objet d'une plainte :

PLAINTÉ DÉPOSÉE CONTRE LE JUGE EN CHEF DE LA COUR DE JUSTICE DE L'ONTARIO

ARTICLE 50

(28) Les membres qui sont nommés aux termes de l'alinéa (2) g) ont le droit de recevoir la rémunération quotidienne que fixe le lieutenant-gouverneur en conseil.

RÉMUNÉRATION

(27) Sont irrecevables les actions ou autres instances en dommages-intérêts introduites contre le Conseil de la magistrature, un de ses membres ou de ses employés ou quiconque agit sous son autorité pour un acte accompli de bonne foi dans l'exercice effectif ou censé tel de ses fonctions.

IMMUNITÉ

b) ils n'ont pas été traités comme des documents ou renseignements confidentiels et n'ont pas été préparés exclusivement aux fins de la médiation ou d'une réunion ou d'une audience du Conseil.

a) leur divulgation par le Conseil de la magistrature est exigée par la présente loi;

(26) Le paragraphe (24) ne s'applique pas aux renseignements ni aux documents qui satisfont à l'une ou l'autre des conditions suivantes :

EXCEPTIONS

(25) Le paragraphe (24) s'applique, que les renseignements ou les documents soient en la possession du Conseil de la magistrature, du procureur général ou d'une autre personne

Idem

(24) Le Conseil de la magistrature ou un sous-comité peut ordonner que tout renseignement ou document relatif à une médiation ou à une réunion ou audience du Conseil qui a été tenue à huis clos est confidentiel et ne doit pas être divulgué ni rendu public.

DOSSIERS CONFIDENTIELS

(3) Si le juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional nommé aux termes de l'alinéa 49 (2) c) fait l'objet d'une plainte, le juge en chef de la Cour de justice de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario provincial au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef adjoint ou du juge principal régional, selon le cas, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

PLAINTÉ DÉPOSÉE CONTRE LE JUGE EN CHEF ADJOINT OU UN JUGE PRINCIPAL RÉGIONAL

PLAINTÉ DÉPOSÉE CONTRE LE JUGE EN CHEF ADJOINT OU UN JUGE PRINCIPAL RÉGIONAL

b) d'autre part, les approbations annuelles qui seraient par ailleurs accordées ou refusées par le juge en chef de la Cour de justice de l'Ontario sont accordées ou refusées par le juge en chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

a) d'une part, les plaintes qui seraient par ailleurs renvoyées au juge en chef de la Cour de justice de l'Ontario aux termes des alinéas 51.4 (13) b) et 51.4 (18) c), du sous-alinéa 51.5 (8) b) (ii) et de l'alinéa 51.5 (10) b) sont renvoyées au juge en chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

(2) Si le juge en chef de la Cour de justice de l'Ontario est suspendu en vertu du paragraphe 51.4 (12) :

SUSPENSION DU JUGE EN CHEF

c) tout renvoi de la plainte qui serait par ailleurs fait au juge en chef de la Cour de justice de l'Ontario aux termes de l'alinéa 51.4 (13) b) ou 51.4 (18) c), du sous-alinéa 51.5 (8) b) (ii) ou de l'alinéa 51.5 (10) b) est fait au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

b) le juge en chef adjoint de la Cour de justice de l'Ontario préside les réunions et les audiences du Conseil au lieu du juge en chef, de la Cour de justice de l'Ontario et fait des nominations en vertu du paragraphe 49 (3) au lieu du juge en chef, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

VACANCE

(12) Si le poste d'un membre nommé aux termes de l'alinéa (2) d), f) ou g) devient vacant, un nouveau membre possédant des compétences similaires peut être nommé pour terminer le mandat.

QUORUM

(13) Les règles suivantes concernant le quorum s'appliquent, sous réserve des paragraphes (15) et (17) :

1. Huit membres, y compris le président, constituent le quorum.
2. Au moins la moitié des membres présents doivent être des juges et au moins quatre autres membres ne doivent pas être des juges.

COMITÉ D'EXAMEN

(14) Le Conseil de la magistrature peut former un comité en vue de traiter une plainte visée au paragraphe 51.4 (17) ou (18) ou au paragraphe 51.5 (8) ou (10) et d'examiner la question concernant l'indemnisation aux termes de l'article 51.7 et, à cette fin, le comité a les mêmes pouvoirs que le Conseil de la magistrature.

Idem
(15) Les règles suivantes s'appliquent à un comité formé en vertu du paragraphe (14) :

1. Le comité se compose de deux juges provinciaux autres que le juge en chef, d'un avocat et d'une personne qui n'est ni juge ni avocat.
2. Un des juges, désigné par le Conseil de la magistrature, préside le comité.
3. Quatre membres constituent le quorum.

COMITÉS D'AUDIENCE

(16) Le Conseil de la magistrature peut former un comité en vue de tenir une audience en vertu de l'article 51.6 et d'examiner la question concernant l'indemnisation aux termes de l'article 51.7 et, à cette fin, le comité a les mêmes pouvoirs que le Conseil de la magistrature.

Idem
(17) Les règles suivantes s'appliquent à un comité formé en vertu du paragraphe (16) :

1. La moitié des membres du comité, y compris le président, doivent être des juges et la moitié ne doivent pas être des juges.

Idem

(23) Le Conseil de la magistrature administre séparément une partie de son budget affecté aux services de soutien pour répondre aux besoins de tout membre qui a une invalidité.

SERVICES DE SOUTIEN

(22) Le Conseil de la magistrature fournit des services de soutien, y compris l'orientation initiale et la formation continue, pour permettre à ses membres de participer efficacement. Il prête une attention particulière aux besoins des membres qui ne sont ni juges ni avocats et administre séparément une partie de son budget affecté aux services de soutien à cette fin.

EXPERTS

(21) Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider.

Idem

- (20) Les membres du Conseil de la magistrature qui ont traité la plainte aux termes du paragraphe 51.4 (17) ou (18) ou du paragraphe 51.5 (8) ou (10) ne doivent pas participer à une audience sur la plainte prévue à l'article 51.6.
- a) traiter la plainte aux termes du paragraphe 51.4 (17) ou (18) ou du paragraphe 51.5 (8) ou (10);
- b) participer à une audience sur la plainte prévue à l'article 51.6.

(19) Les membres du sous-comité qui a enquêté sur une plainte ne doivent pas, selon le cas :

PARTICIPATION AUX ÉTAPES DE LA PROCÉDURE

(18) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

PRÉSIDENCE

(17) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(16) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(15) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(14) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(13) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(12) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(11) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(10) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(9) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(8) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(7) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(6) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(5) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

(4) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

LOI SUR LES TRIBUNAUX
JUDICIAIRES – CHAPITRE C.43
CONSEIL DE LA MAGISTRATURE

ARTICLE 49

CONSEIL DE LA MAGISTRATURE

49 (1) Le Conseil de la magistrature de l'Ontario est maintenu sous le nom de Conseil de la magistrature de l'Ontario en français et sous le nom de Ontario Judicial Council en anglais.

COMPOSITION

(2) Le Conseil de la magistrature se compose :

- a) du juge en chef de l'Ontario ou d'un autre juge de la Cour d'appel désigné par le juge en chef;
- b) du juge en chef de la Cour de justice de l'Ontario, ou d'un autre juge de cette cour désigné par le juge en chef, et du juge en chef adjoint de la Cour de justice de l'Ontario;
- c) d'un juge principal régional de la Cour de justice de l'Ontario, nommé par le lieutenant-gouverneur en conseil sur la recommandation du procureur général;
- d) de deux juges de la Cour de justice de l'Ontario nommés par le juge en chef;
- e) du trésorier de la Société du barreau du Haut-Canada ou d'un autre conseiller de la Société du barreau qui est avocat désigné par le trésorier;
- f) d'un avocat qui n'est pas conseiller de la Société du barreau du Haut-Canada, nommé par la Société de quatre personnes qui ne sont ni juges ni avocats, nommées par le lieutenant-gouverneur en conseil sur la recommandation du procureur général;

MEMBRES TEMPORAIRES

(3) Le juge en chef de la Cour de justice de l'Ontario peut nommer un juge de cette division au Conseil de la magistrature à titre de membre temporaire au lieu d'un autre juge provincial, en vue de traiter une plainte, si les exigences des paragraphes (13), (15), (17), (19) et (20) ne peuvent autrement être satisfaites.

CRITÈRES

(4) Au moment de la nomination des membres effectuée aux termes des alinéas (2) d), f) et g), l'importance qu'il y a de refléter, dans la composition du Conseil de la magistrature, la dualité linguistique de l'Ontario et la diversité de sa population et de garantir un équilibre général entre les deux sexes est reconnue.

MANDAT

(5) Le juge principal régional qui est nommé aux termes de l'alinéa (2) c) demeure membre du Conseil de la magistrature jusqu'à ce qu'il cesse d'exercer les fonctions de juge principal régional.

Idem

(6) Le mandat des membres qui sont nommés aux termes des alinéas (2) d), f) et g) est de quatre ans et n'est pas renouvelable.

MANDATS DE DURÉES DIVERSES

(7) Malgré le paragraphe (6), le mandat d'un des membres nommés pour la première fois aux termes de l'alinéa (2) d) et de deux des membres nommés pour la première fois aux termes de l'alinéa (2) g) est de six ans.

PRÉSIDENCE

(8) Le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel désigné par le juge en chef, préside les réunions et les audiences du Conseil de la magistrature qui portent sur des plaintes portées contre certains juges, et les réunions tenues par celui-ci pour l'application de l'article 45 et du paragraphe 47 (5).

Idem

(9) Le juge en chef de la Cour de justice de l'Ontario, ou un autre juge de cette cour désigné par le juge en chef, préside les autres réunions et audiences du Conseil de la magistrature.

Idem

(10) Le président a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

AUDIENCES ET RÉUNIONS PUBLIQUES
ET À HUIS CLOS

(11) Les audiences et les réunions du Conseil de la magistrature prévues aux articles 51.6 et 51.7 sont ouvertes au public, à moins que le paragraphe 51.6 (7) ne s'applique. Ses autres audiences et réunions peuvent être tenues à huis clos, sauf disposition contraire de la présente loi.

ANNEXE « D »

LOI SUR LES TRIBUNAUX JUDICIAIRES CHAPITRE C.43 CONSEIL DE LA MAGISTRATURE

Les textes de la *Loi sur les tribunaux judiciaires*, c. C-43 qui suivent ne doivent pas être considérés comme les textes authentiques, lesquels se trouvent dans les volumes officiels et les codifications administratives imprimés par Publications Ontario.

pertinente dans sa publication régulière « *Items of Interest* ». Les avocats du Centre participent aux réunions du Secrétariat de la formation et aux séminaires et programmes offerts par la Conférence des juges de l'Ontario et le Secrétariat de la formation.

2. RECENT DEVELOPMENTS : Le juge Ian MacDonnell présente aussi aux juges de la Cour de justice de l'Ontario, dans une publication intitulée « *Recent Developments* », ses conclusions et commentaires sur des décisions de droit criminel récemment rendues par la Cour d'appel de l'Ontario et la Cour suprême du Canada.

3. CONGÉS AUTOFINANÇES : Pour permettre aux juges de suivre des séances de formation échappant aux paramètres des programmes de formation judiciaires habituels, la Cour de justice de l'Ontario a mis au point une politique de congés autofinancés. Les juges peuvent ainsi reporter une partie de leur traitement sur plusieurs années et prendre un congé sabbatique pour une période maximale de douze mois. Ces congés doivent être approuvés au préalable, un comité d'examen par les pairs étudie les demandes et choisit les juges autorisés à prendre un congé.

4. ASSEMBLÉES RÉGIONALES : Des assemblées annuelles régionales sont organisées dans les sept régions relevant de la Cour de justice de l'Ontario. Ces assemblées sont habituellement l'occasion de traiter de questions d'administration et de gestion régionales, mais certaines ont aussi un volet éducatif. C'est le cas, par exemple, de l'assemblée régionale du Nord de l'Ontario où des juges des régions du Nord-Est et du Nord-Ouest se réunissent pour discuter de questions de formation présentant un intérêt particulier pour le Nord, telles que l'isolement des juges, les déplacements et le traitement des autochtones dans le système judiciaire.

5. En plus des programmes éducatifs mentionnés ci-dessus, la formation de base des juges continue d'être autonome et s'effectue, entre autres, à travers les discussions permanentes avec les pairs et les lectures et recherches individuelles.



4. INSTITUT NATIONAL DE LA MAGISTRATURE

(INM) : La Cour de justice de l'Ontario, par le biais du Secrétaire de la formation, contribue financièrement au fonctionnement de l'Institut national de la magistrature. L'INM est basé à Ottawa et commande plusieurs programmes de formation canadiens destinés aux juges nommés par l'autorité fédérale et provinciale. De nombreux juges ont déjà participé aux programmes de l'INM et continueront d'y participer à l'avenir, si l'emplacement et les sujets traités leur conviennent. Le juge en chef est membre du conseil d'administration de l'INM.

La Cour de justice de l'Ontario a conclu un partenariat avec l'INM qui a mené à l'embauche d'un directeur de la formation à la Cour de justice de l'Ontario. Cette personne est également chargée de la coordination et de l'élaboration des programmes pour les juges d'autres provinces.

En septembre 2002, la Cour de justice de l'Ontario et l'Institut national de la magistrature ont présenté une conférence conjointe sur les lois régissant l'aide à l'enfance devant des juges fédéraux et provinciaux des quatre coins du pays. La Cour de justice de l'Ontario et l'INM ont également animé ensemble, à Stratford, le programme annuel sur les compétences des juges et, plus récemment, le programme sur les compétences des nouveaux juges, à Niagara-on-the-Lake.

IV. AUTRES RESSOURCES EDUCATIVES

1. CENTRE DE RECHERCHE ET DE FORMATION JUDICIAIRES : Les juges de la Cour de justice de l'Ontario ont accès au Centre de recherche et de formation judiciaires de la Cour qui se trouve dans l'ancien hôtel de ville de Toronto. Le Centre, qui a une bibliothèque de droit et offre des services de recherche informatiques, est animé par trois avocats-rechercheurs aides d'un personnel de soutien et peut être rejoint en personne, par téléphone, courriel ou télécopieur. Le Centre répond aux demandes des juges pour lesquelles il faut faire des recherches et offre des mises à jour sur les lois et la jurisprudence

• la Criminal Lawyers' Association;

• l'Advocates' Society;

• l'Ontario Association for Family

Mediation/Médiation Canada;

• l'Institut canadien d'administration de la

justice;

• l'Association internationale des femmes

juges (Section canadienne);

• l'Ontario Family Court Clinic Conference;

• l'Institut canadien d'études juridiques

supérieures (conférences de Cambridge).

Le Secrétaire de la formation a créé un comité de participation aux conférences qui est chargé d'étudier les demandes de financement individuel présentées par les juges pour suivre d'autres conférences/séminaires/programmes que ceux offerts par la Cour de justice de l'Ontario. Si le comité décide d'accorder des fonds, ces fonds ne couvrent habituellement pas l'intégralité des frais de participation, car l'objectif est de fournir une aide supplémentaire aux juges qui sont prêts à défrayer une partie des coûts.

3. COURS D'INFORMATIQUE : La Cour de

justice de l'Ontario a offert, par le biais de conseillers en formation retenus à la suite d'un appel d'offres, une série de cours de formation informatique à ses juges. Les cours étaient organisés en fonction du niveau de compétence et de l'emplacement géographique et offerts à différentes dates un peu partout dans la province. En général, les juges se rendaient dans les bureaux des conseillers en formation pour se familiariser avec le fonctionnement des ordinateurs, le traitement de textes et le stockage et l'extraction des données. D'autres cours portaient sur l'utilisation de *Quickdraw* (base de données juridiques et instrument de recherche), ces cours continuent d'être offerts.

Avec le lancement du projet d'implantation d'ordinateurs dans le système de justice ontarien, pendant l'été 1998, la formation informatique des juges s'est intensifiée afin que tous les membres de la Cour aient une connaissance appropriée des ordinateurs.

5. PROGRAMME DE FORMATION EN MILIEU UNIVERSITAIRE : Ce programme est offert au printemps, pendant cinq jours, dans une université ou un cadre semblable. Quelque 30 juges y étudient de façon approfondie divers sujets liés au droit criminel dans un contexte académique. Le même programme, légèrement modifié, est offert chaque année sur une période de trois ans pour permettre à un plus grand nombre de juges de profiter eux aussi de cet enseignement.

III. PROGRAMMES DE FORMATION INDÉPENDANTS

1. COURS EN FRANÇAIS : Les juges de la Cour de justice de l'Ontario qui parlent couramment le français peuvent suivre les cours offerts par le Bureau du commissaire à la magistrature fédérale. La fréquence et la durée de ces cours varient en fonction de la connaissance du français des participants. L'objectif des cours est de s'assurer que les juges qui sont appelés à présider des audiences en français devant la Cour de justice de l'Ontario maîtrisent, et continuent de maîtriser cette langue. Les cours sont offerts à deux niveaux : a) cours de terminologie pour les juges francophones; b) cours de terminologie pour les juges anglophones (bilingues).

2. AUTRES PROGRAMMES DE FORMATION : Les juges de la Cour de justice de l'Ontario sont encouragés à participer aux programmes de formation qui les intéressent et sont offerts par d'autres organisations et associations, telles que :

- l'Association canadienne des juges de cours provinciales,
- l'Institut national de la magistrature,
- la Fédération des ordres professionnels de juristes du Canada : droit criminel (droit substantiel/droit de la procédure/droit de la preuve) et droit de la famille;
- l'International Association of Juvenile and Family Court Magistrates;
- l'Association du Barreau canadien;

utilise dans de nombreux programmes de formation offerts par la Cour de justice de l'Ontario.

La Cour a entrepris son deuxième grand programme axé sur le contexte social et l'a proposé à tous ses juges, en mai 1996. L'objectif du programme, intitulé The Court in an Inclusive Society, était de renseigner les participants sur l'évolution de la société, de mesurer l'impact de cette évolution et de donner aux magistrats les moyens de faire face aux changements. Le programme avait recours à toutes sortes de techniques pédagogiques, y compris des séances en grands et petits groupes. Des juges-animateurs avaient été spécialement formés pour présenter le programme offert après d'intensives consultations communautaires.

En septembre 2000, des membres de la Conférence des juges de l'Ontario et de l'Association canadienne des cours de justice provinciales se sont réunis à Ottawa pour un congrès mixte couvrant, entre autres, certaines questions liées à la pauvreté et au traitement des Autochtones dans le système judiciaire.

En 2003, le thème de notre assemblée annuelle était l'accès à la justice. Pour l'illustrer, on avait présenté une pièce suivie d'un débat d'experts expliquant comment l'alphabétisation, la race, la pauvreté, la négligence, les mauvais traitements et la violence au foyer influent sur l'accès à la justice. Dans une autre séance, on s'était servi de conférences, de vidéos, de débats d'experts et de travaux en petits groupes pour examiner comment les tribunaux font face au problème de l'alphabétisation et en tirer un enseignement.

Pour souligner l'engagement de la Cour envers la formation axée sur le contexte social, la Conférence des juges de l'Ontario a créé un comité spécial sur l'égalité. Ce comité s'assure que les questions liées au contexte social font systématiquement partie des programmes de formation offerts par la Conférence des juges de l'Ontario.

présenté ces séminaires pour la première fois en mars 2000. Seize juges de la Cour de justice de l'Ontario et deux juges de l'Association canadienne des juges de cours provinciales avaient été invités comme observateurs et participants pour évaluer le programme avant qu'on ne l'offre dans d'autres provinces. Le programme a été conçu, mis au point et présenté par le professeur Neil Gold et son associé, Frank Borowicz, qui ont adapté le projet pilote au rôle particulier des juges de première instance dans les tribunaux canadiens. Le programme a été offert à nouveau en mars 2002 à 21 juges de la Cour de justice de l'Ontario.

Du 2 au 4 juin 2003, la Cour, de concert avec l'Institut national de la magistrature, a préparé un atelier sur la communication dans les salles d'audience, qui a été offert à Stratford. Les juges ont pu apprendre, et mettre en pratique, certaines techniques à travers des exercices où l'on recréait des situations difficiles survenant en salle d'audience. Ils ont appris comment améliorer leur style de communication, avec l'aide de répétiteurs de théâtre et d'autres professionnels de la communication. Douze juges de la Cour de justice de l'Ontario et douze juges nommés par l'autorité fédérale ont été invités à participer au programme. Le programme a été offert à nouveau à Stratford en juin 2004 et sera repris en juin 2005.

4. PROGRAMMES AXÉS SUR LE CONTEXTE SOCIAL : La Cour de justice de l'Ontario a présenté d'importants programmes sur le contexte social. Le premier de ces programmes, intitulé *Gender Equity*, a été offert à l'automne 1992. Pour la planification et la présentation, on avait fait appel à des ressources professionnelles et communautaires. Plusieurs juges de la Cour de justice de l'Ontario avaient suivi une formation d'animateurs pendant le processus de planification, qui avait duré plus de 12 semaines. On avait utilisé un grand nombre de vidéos et de matériel imprimé qui servent de référence permanente. Ce modèle, qui fait appel à des animateurs, a depuis été

En février 2005, le programme sur le jugement écrit sera remplacé par un programme sur le jugement oral. Mis au point par l'Institut national de la magistrature, le programme sera présenté par le professeur Berry et plusieurs juges de la Cour d'appel de l'Ontario. Le programme a été offert lors de l'assemblée annuelle à 25 juges de la Cour et aux 12 juges qui avaient suivi le programme sur les compétences des nouveaux juges. Vingt-cinq autres juges se sont inscrits au programme de février 2005, tenu à Toronto. Dans les années à venir, lorsque la plupart des juges auront participé au programme sur le jugement oral, nous comptons offrir en alternance le programme sur le jugement écrit et le programme sur le jugement oral.

Pendant l'exercice 1997-1998, le Secrétaire de la formation a engagé le professeur Berry et l'a chargé de préparer un texte sur la rédaction des motifs, intitulé *Writing Reasons*, pour distribution à tous les juges de la Cour. Ce texte est maintenant terminé, il a été distribué à tous les juges, et en est à sa deuxième édition.

2. SÉMINAIRE DE PRÉ-RETRAITE : Destiné à aider les juges à planifier leur retraite (avec leurs conjoints), ce séminaire de deux jours et demi est offert à Toronto, lorsqu'il y a suffisamment de candidats.

3. PROGRAMME DE COMMUNICATION JUDICIAIRE : En mars 1998, la Cour de justice de l'Ontario a retenu les services des professeurs Gordon Zimmerman et Alayne Casteel de l'University of Nevada et leur a demandé de présenter un programme de formation à la communication judiciaire. Le programme comportait des activités et discussions dirigées sur la communication verbale et non-verbale, l'écoute et d'autres problèmes connexes. Chaque juge était filmé et ses techniques de communication analysées. Le programme, présenté à 25 juges de la Cour de justice de l'Ontario, devait servir de projet pilote pour d'autres séminaires sur la communication judiciaire qui seront offerts lorsque les fonds et le temps le permettront. Le Secrétaire a

La Conférence des juges de l'Ontario offre trois programmes de formation en droit de la famille, en janvier (Judicial Development Institute), en mai (pendant l'assemblée annuelle de la Cour), et en septembre. En général, les principaux sujets abordés sont : a) l'aide à l'enfance; et b) le droit de la famille (garde, accès et pensions alimentaires). D'autres sujets liés au perfectionnement professionnel, à la gestion des causes, aux modifications législatives, au contexte social et autres sont ajoutés au besoin. Les programmes durent deux à trois jours et s'adressent à tous les juges qui consacrent une bonne partie de leur temps à arbitrer des questions de droit de la famille.

Deux grands programmes liés au droit criminel sont également offerts chaque année.

a) Un séminaire régional de trois jours est organisé en octobre et en novembre de chaque année dans quatre régions. En général, ces séminaires traitent de la détermination de la peine, de la justice pénale pour les adolescents et du droit de la preuve, mais de nombreux autres sujets peuvent également être abordés. Des programmes semblables sont offerts dans chacune des régions.

b) Un séminaire de formation de deux jours et demi est offert en mai, pendant l'assemblée annuelle de la Cour.

Tous les juges présidant des tribunaux de droit criminel peuvent assister à ces séminaires et y sont encouragés.

II. PROGRAMMES DU SECRETARIAT

Les programmes qui sont planifiés et offerts par le Secrétaire de la formation traitent habituellement de sujets qui ne portent pas essentiellement sur le droit criminel, ni sur le droit de la famille, et peuvent être offerts à plusieurs reprises et à différents groupes de juges.

1. JUGEMENT ÉCRIT : Ce séminaire de deux jours est présenté à une dizaine de juges à la fois lorsque les fonds le permettent. Dernièrement, le professeur Edward Berry de l'University of Victoria a animé deux séminaires, chacun en février, dans les locaux du Cabinet du juge en chef.

Au moment de sa nomination, chaque juge est invité à suivre un programme de mentorat préparé par la Conférence des juges de l'Ontario pour la Cour de justice de l'Ontario et financé par le Secrétaire de la formation. Les nouveaux juges peuvent aussi (comme tous les autres juges) s'adresser à tout moment à leurs pairs pour discuter de problèmes ou de questions qui les intéressent.

Dès qu'ils sont nommés, tous les juges ont accès à une variété de ressources reliées directement ou indirectement au travail de la Cour de justice de l'Ontario, tels que textes juridiques, services de jurisprudence, Centre de recherche et de formation judiciaires de la Cour de justice de l'Ontario (voir plus loin), cours d'informatique et cours sur Quicklaw (base de données juridiques et instrument de recherche).

2. FORMATION CONTINUE

Il existe deux types de programmes de formation continue offerts aux juges de la Cour de justice de l'Ontario :

1) les programmes offerts par la Conférence des juges de l'Ontario qui, habituellement, intéressent plus spécifiquement les juges spécialisés dans le droit criminel ou le droit de la famille;

2) les programmes offerts par le Secrétaire de la formation.

1. PROGRAMMES OFFERTS PAR LA CONFÉRENCE DES JUGES DE L'ONTARIO

Les programmes offerts par la Conférence des juges de l'Ontario forment la base des programmes de formation de la Cour de justice de l'Ontario. La Conférence des juges de l'Ontario a deux comités de formation (droit criminel et droit de la famille) auxquels siègent plusieurs juges. Le président de chaque comité est nommé par la Conférence des juges de l'Ontario et fait partie du Secrétaire de la formation. Ces comités se réunissent selon les besoins et travaillent tout au long de l'année à la planification, l'élaboration et la présentation des programmes de formation de base.

questions pratiques liées au rôle du magistrat, telles que conduite des juges et déontologie judiciaire, comportement en cour, ressources disponibles, etc. Ce programme est offert deux fois par an dans les locaux du Cabinet du juge en chef.

Après leur nomination, les nouveaux juges sont affectés par le juge en chef dans l'une des sept régions de la province. Le juge principal régional indique ensuite au nouveau juge quelles seront ses responsabilités dans la région. Tenant compte des antécédents et de l'expérience du nouveau juge au moment de sa nomination, le juge principal régional lui demande de travailler pendant quelque temps (en général plusieurs semaines avant son assermentation) avec des juges chevronnés et plus expérimentés et/ou dans certaines salles d'audience. Pendant cette période, le nouveau juge siège dans la salle d'audience et en chambre avec des juges expérimentés pour se familiariser avec ses nouvelles responsabilités.

Pendant la première année suivant sa nomination, ou dès que possible après la nomination, les nouveaux juges participent au programme de formation de nouveaux juges organisé par l'Association canadienne des juges de cours provinciales, à Carling Lake, dans la province de Québec. Ce programme intensif d'une semaine comporte des séances pratiques et traite essentiellement du droit criminel, avec quelques références au droit de la famille.

En novembre 2004, la Cour de justice de l'Ontario et l'Institut national de la magistrature ont présenté ensemble un programme sur les compétences des nouveaux juges. Vingt-huit nouveaux juges de cours provinciales du Canada se sont retrouvés pour l'occasion à Niagara-on-the-Lake. Le programme comprenait des ateliers sur le prononcé d'un jugement, écrit et oral, les aptitudes à la communication et la conduite efficace d'une conférence préalable à l'instruction. Douze juges récemment nommés à la Cour de justice de l'Ontario ont participé au programme qui sera offert à nouveau en novembre 2005. Nous encourageons également les juges nommés dans l'année à participer à tous les programmes de formation liés à leur(s) domaine(s) de spécialisation offerts par la Cour de justice de l'Ontario. (Voir la description de ces programmes à la rubrique « Formation continue »).

6. faire mieux comprendre l'importance du perfectionnement professionnel des magistrats;
7. encourager l'adoption de pratiques propices à la formation permanente et à la réflexion;
8. mettre en place et maintenir des structures et systèmes permettant au Secrétaire de s'acquitter de son mandat et de ses objectifs;
9. évaluer le processus et les programmes de formation.

Le Secrétaire de la formation apporte son soutien administratif et logistique aux programmes éducatifs offerts au sein de la Cour de justice de l'Ontario. Tous les projets de programmes de formation doivent lui être présentés pour approbation car il est responsable de l'affectation des fonds.

L'actuel projet de formation des juges de la Cour de justice de l'Ontario comporte deux volets :

1. première année de formation;
2. formation continue.

1. PREMIÈRE ANNÉE DE FORMATION

Chaque juge de la Cour de justice de l'Ontario reçoit des textes et du matériel lorsqu'il est nommé en poste, notamment :

- *Propos sur la conduite des juges* (Conseil canadien de la magistrature);
- *Lois régissant le droit de la famille - Cour de justice de l'Ontario;*
- *Conduite d'un procès;*
- *Conduite d'un procès en matière de droit de la famille;*
- *Manuel des juges;*
- *Règles en matière de droit de la famille;*
- *Rédaction des motifs;*
- *Principes de déontologie judiciaire* (Conseil canadien de la magistrature);
- *Compte rendu de décisions (The FINDER et The Sentencing FINDER).*

La Cour de justice de l'Ontario propose un programme de formation d'une journée aux nouveaux juges peu après leur nomination. Le programme traite de

COUR DE JUSTICE DE L'ONTARIO PLAN DE FORMATION CONTINUE

Le Secrétaire de la formation reconnaît l'importance de la formation pour parvenir à l'excellence professionnelle.

Le mandat du Secrétaire de la formation est de promouvoir les occasions de perfectionnement professionnel et d'encourager ainsi les juges à approfondir leurs connaissances des questions de fond, et à poursuivre une formation permanente et autonome.

Soucieux de préserver l'indépendance de la magistrature, le Secrétaire de la formation s'engage à faire ce qui suit :

- promouvoir la formation afin d'encourager l'excellence;
- appuyer et promouvoir les programmes qui augmentent la prise de conscience sociale, éthique et culturelle.

Les objectifs du Secrétaire de la formation sont les suivants :

1. encourager le perfectionnement professionnel et l'épanouissement personnel permanents;
2. s'assurer que la formation répond aux besoins et intérêts des magistrats de la province;
3. appuyer et encourager les programmes qui entretiennent un haut niveau de compétences et de connaissances dans le domaine du droit de la preuve, du droit de la procédure et du droit substantiel;

4. faire mieux connaître et comprendre les structures et ressources liées aux services socio-communautaires qui peuvent compléter les programmes de formation et faciliter le travail des tribunaux;
5. encourager la participation et le recrutement actifs des magistrats à toutes les étapes de la conceptualisation, de l'élaboration, de la planification, de la prestation et de l'évaluation des programmes;

- Les objectifs du projet de formation continue de la Cour de justice de l'Ontario sont les suivants :
1. Maintenir et développer les compétences professionnelles;
 2. Maintenir et développer la sensibilité aux questions sociales;
 3. Encourager l'épanouissement personnel.

Le projet offre à chaque juge la possibilité de suivre environ dix jours de formation continue par année civile. La formation porte sur des sujets variés : droit substantiel, droit de la preuve, *Charte canadienne des droits et libertés*, perfectionnement professionnel et contexte social. Nombre des programmes s'adressant aux juges de la Cour de justice de l'Ontario sont préparés et présentés par des juges de la Cour elle-même, mais nous faisons souvent appel à des ressources indépendantes pour planifier et présenter les programmes. Ainsi, la plupart de nos programmes de formation sont offerts par des avocats, des hauts fonctionnaires, des responsables de l'application de la loi, des universitaires et d'autres professionnels. Nous encourageons aussi les juges à s'inscrire aux programmes indépendants qui les intéressent et peuvent les aider dans leur travail et présenter un avantage pour la Cour de justice de l'Ontario.

SECRÉTARIAT DE LA FORMATION

Le Secrétaire de la formation coordonne la planification et la présentation des programmes éducatifs. Le Secrétaire est composé des membres suivants : le juge en chef qui en est le président (d'office), quatre juges nommés par le juge en chef et quatre juges nommés par la Conférence des juges de l'Ontario. Les avocats-rechercheurs de la Cour de justice de l'Ontario font office de conseillers. Les membres du Secrétaire se réunissent environ cinq fois par an pour discuter de questions liées à la formation et rendre compte de leurs activités au juge en chef. Le Secrétaire de la formation a le mandat et les objectifs suivants :

ANNEXE « C »

COUR DE JUSTICE DE L'ONTARIO
PLAN DE FORMATION CONTINUE

Classement des dossiers

Une fois que les parties ont été avisées de la décision du CMO, le dossier original de la plainte est rangé dans un classeur verrouillé avec la mention « classe ». Les membres du sous-comité des plaintes retournent leur exemplaire du dossier au greffier pour qu'il soit détruit ou l'informent, par écrit, qu'ils l'ont détruit eux-mêmes. Si l'exemplaire d'un membre ou un avis écrit de sa destruction ne sont pas reçus dans les deux semaines qui suivent la réunion du comité d'examen, le personnel du CMO prend contact avec le membre du sous-comité des plaintes pour lui rappeler qu'il doit détruire son exemplaire du dossier, et en aviser le CMO par écrit, ou le renvoyer au CMO, par messenger, pour qu'il soit déchiqueté.



final et l'ébauche de lettre au plaignant soumis aux fins d'approbation ne contiennent pas de renseignements susceptibles d'identifier le plaignant ni le juge visé par la plainte. Un double du résumé final est déposé dans chaque dossier de plainte classé ainsi qu'un double de la lettre finale au plaignant indiquant de quelle façon la plainte a été réglée.

Avis de décision
Notification des parties

Une fois que l'ébauche de lettre au plaignant a été approuvée par le sous-comité des plaintes chargé de l'enquête et par le comité d'examen, une lettre finale est préparée et envoyée au plaignant.

Dans les cas où la plainte est rejetée, le plaignant est avisé de la décision du CMO, motifs à l'appui, comme requis à l'alinéa 51.4 de la Loi sur les tribunaux judiciaires.

Le CMO a distribué une formule à tous les juges, demandant à chacun d'indiquer au CMO les circonstances dans lesquelles le juge désire être avisé des plaintes dont il fait l'objet et qui sont rejetées. Le CMO a aussi distribué une formule d'adresse à tous les juges pour qu'ils indiquent au CMO l'adresse à laquelle la correspondance concernant les plaintes doit être envoyée.

Les juges à qui l'on a demandé de répondre à une plainte ou qui, à la connaissance du CMO, sont d'une autre façon au courant de la plainte, sont avisés par téléphone de la décision du CMO. Une lettre confirmant la façon dont la plainte a été réglée est également envoyée au juge conformément à ses instructions.

l'aider dans son enquête. Si nécessaire, le greffier détermine auprès du plaignant, à quelle étape en est l'instance judiciaire avant d'ordonner une transcription. Le sous-comité des plaintes peut demander au greffier de laisser le dossier en suspens dans l'attente du règlement de l'affaire devant les tribunaux.

Si un sous-comité des plaintes requiert une réponse du juge, il enjoint au greffier de demander au juge de répondre à la question ou à la préoccupation particulière soulevée dans la plainte. Une copie de la plainte, la transcription (le cas échéant) et tous les documents pertinents au dossier sont communiqués au juge avec la lettre demandant la réponse. Un juge a 30 jours à compter de la date de la lettre demandant une réponse pour répondre à la plainte. Si une réponse n'est pas reçue dans les 30 jours, les membres du sous-comité des plaintes sont prévenus et une lettre de rappel est envoyée au juge par courrier recommandé. Si aucune réponse n'est reçue dans les dix jours qui suivent la date du courrier recommandé, et que le sous-comité des plaintes est convaincu que le juge est au courant de la plainte et dispose de tous les détails la concernant, il poursuit en l'absence d'une réponse. Toute réponse à la plainte fournie par le juge à cette étape de la procédure est réputée avoir été faite sous toutes réserves et ne peut pas être utilisée lors d'une audience.

La transcription ou la bande sonore des preuves et les réponses des juges aux plaintes sont envoyées aux membres du sous-comité des plaintes par messagerie, à moins d'indication contraire de leur part.

Un sous-comité des plaintes peut inviter toute partie ou tout témoin à le rencontrer ou à communiquer avec lui au cours de son enquête. Le secrétaire du CMO transcrit les lettres de plaintes qui sont écrites à la main et apporte aux membres du sous-comité des plaintes le soutien dont ils ont besoin en matière de secrétariat.

Un sous-comité des plaintes peut demander au greffier d'engager des personnes, notamment des avocats, ou de retenir leurs services, pour l'aider dans la conduite de son enquête (alinéa 51.4(5)). Avant chaque réunion prévue du CMO, un membre de chaque sous-comité des plaintes est chargé de contacter le greffier adjoind avant une date déterminée

pour lui faire savoir quels dossiers assignés au sous-comité des plaintes sont prêts, le cas échéant, à être renvoyés devant un comité d'examen. Le sous-comité des plaintes fournit également une copie dûment remplie et lisible des pages 2 et 3 de la formule de réception des plaintes pour chaque dossier prêt à être renvoyé, et indique quels autres documents au dossier, outre la plainte, doivent être copiés et soumis aux membres du comité d'examen. Aucun renseignement susceptible d'identifier soit le plaignant, soit le juge visé par la plainte n'est inclus dans les documents communiqués aux membres du comité d'examen. Au moins un membre d'un sous-comité des plaintes est présent lorsque le rapport du sous-comité est présenté à un comité d'examen. Les membres du sous-comité des plaintes peuvent aussi participer par téléconférence au besoin.

Comités d'examen

Le président du comité d'examen veille à ce qu'au moins une copie de la page pertinente de la formule de réception des plaintes soit remplie et remise au greffier à la fin de l'audience du comité d'examen.

Documents préparés pour les réunions

Tous les documents préparés pour les réunions du Conseil de la magistrature de l'Ontario sont confidentiels et ne peuvent ni être divulgués ni rendus publics.

Lorsqu'un sous-comité des plaintes indique qu'il est prêt à présenter un rapport à un comité d'examen, le greffier prépare et fait circuler une ébauche de résumé du dossier et une ébauche de lettre au plaignant aux membres du sous-comité des plaintes qui présente le rapport et aux membres du comité d'examen chargé d'entendre le rapport. L'ébauche de résumé du dossier et l'ébauche de lettre au plaignant sont communiquées aux membres pour qu'ils puissent les examiner au moins une semaine avant la date de la réunion prévue du Conseil de la magistrature. Des modifications peuvent être apportées à ces documents après discussion entre les membres du Conseil de la magistrature lors de la réunion tenue pour étudier les recommandations du sous-comité des plaintes sur les différents dossiers. L'ébauche de résumé et le résumé

QUESTIONS ADMINISTRATIVES

Réception des plaintes

- Lorsqu'une personne*, qui veut saisir d'une plainte le Conseil de la magistrature de l'Ontario (CMO) ou un membre du Conseil agissant à ce titre, fait une allégation orale à cet effet, elle est encouragée à déposer la plainte par écrit. Si cette personne ne soumet pas une plainte par écrit au Conseil de la magistrature dans les 10 jours qui suivent l'allégation, le greffier, après consultation avec un avocat et avec le membre du Conseil de la magistrature auquel l'allégation a été faite, transcrit les détails de la plainte par écrit. Ce résumé écrit de l'allégation est envoyé par courrier recommandé à l'auteur de l'allégation, si son adresse est connue, accompagné d'un avis indiquant que l'allégation, telle que résumée, devient la plainte sur la base de laquelle la conduite du juge provincial en cause sera évaluée. Le dixième jour suivant l'envoi de ce résumé, si l'auteur de l'allégation n'a pas répondu, le résumé écrit est réputé être une plainte alléguant qu'il y a eu une mauvaise conduite de la part du juge provincial.
- si la plainte est du ressort du CMO (tout juge ou protonotaire provincial – à temps plein ou à temps partiel), un dossier de plainte est ouvert et assigné à un sous-comité des plaintes de deux membres aux fins d'examen et d'enquête (les plaintes qui ne sont pas du ressort du CMO sont renvoyées à l'organisme approprié).
- le greffier examine chaque lettre de plainte qu'il reçoit et, si la plainte justifie l'ouverture et l'assignation d'un dossier, le greffier détermine s'il est nécessaire ou non d'ordonner une transcription ou une bande sonore de l'instance judiciaire, ou les deux, aux fins d'examen par le sous-comité des plaintes et, dans l'affirmative, demande au greffier d'ajouter la formule de repérage, un numéro séquentiel est assigné au dossier, une lettre d'accusé de réception est envoyée au plaignant dans la semaine qui suit la réception de sa plainte, la page un de la formule de réception des plaintes est remplie, et une lettre,

- Pour faciliter la lecture du texte, le masculin est utilisé pour désigner les deux sexes.
- accompagnée des recommandations du greffier concernant le dossier, le cas échéant, est préparée à l'intention des membres du sous-comité des plaintes. Un double de tous les documents est placé dans le dossier des plaintes du bureau et dans le dossier des plaintes de chacun des membres.
- Un rapport d'étape sur tous les dossiers de plaintes en cours – dont tout renseignement personnel a été supprimé – est communiqué à chaque membre du CMO lors de chacune de ses réunions ordinaires.

Sous-comité des plaintes

Les membres du sous-comité des plaintes s'efforcent de faire le point sur la situation de tous les dossiers ouverts qui leur sont assignés lorsqu'ils reçoivent leur rapport d'étape tous les mois, et ils prennent les mesures nécessaires pour pouvoir soumettre le dossier au CMO, aux fins d'examen, le plus vite possible.

Une lettre informant les membres du sous-comité des plaintes qu'un nouveau dossier leur a été assigné leur est envoyée à titre d'information, dans la semaine qui suit l'ouverture et l'assignation du dossier. Les membres du sous-comité des plaintes sont invités à indiquer s'ils veulent que leur copie du dossier leur soit délivrée ou qu'elle soit conservée dans le tiroir verrouillé de leur classeur dans le bureau du CMO. Tout membre qui demande qu'une copie du dossier lui soit délivrée doit en accuser réception. Les membres du sous-comité des plaintes peuvent se présenter au bureau du CMO pour examiner leurs dossiers pendant les heures normales de bureau.

Les membres du sous-comité des plaintes s'efforcent d'examiner les dossiers qui leur sont assignés et d'en discuter dans le mois qui suit leur réception du dossier. Tous les documents (transcriptions, audiocassettes, dossiers des tribunaux, etc.) qu'un sous-comité des plaintes désire examiner en rapport avec une plainte sont obtenus en son nom par le greffier, et non individuellement par les membres du sous-comité.

Suivant la nature de la plainte, le sous-comité des plaintes peut demander au greffier d'ordonner une transcription ou audiocassette de la preuve pour

Si le juge en chef de la Cour de justice de l'Ontario est suspendu en attendant une décision définitive concernant la plainte portée contre lui, les approbations annuelles qui seraient par ailleurs accordées ou refusées par le juge en chef de la Cour de justice de l'Ontario sont accordées ou refusées par le juge en chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

par. 50 (2)(b)

Si le juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional nommé au Conseil de la magistrature fait l'objet d'une plainte, le juge en chef de la Cour de justice de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef adjoint ou du juge principal régional, selon le cas, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

par. 50 (3)

Le paragraphe 87.1 (1) de la *Loi sur les tribunaux judiciaires* et certaines dispositions spéciales s'appliquent aux juges provinciaux qui ont été affectés à la Cour provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990.

PLAINTES

Lorsque le Conseil de la magistrature traite une plainte portée contre un juge provincial qui a été affecté à la Cour provinciale (Division civile) immédiatement avant le 1^{er} septembre 1990, les dispositions spéciales suivantes s'appliquent :

1. Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un juge provincial qui a été affecté à la Cour provinciale

3. Les recommandations du sous-comité des plaintes concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, à qui les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

Plainte contre un protonotaire

Le paragraphe 87 (3) de la *Loi sur les tribunaux judiciaires* précise que les articles 44 à 51.12 s'appliquent, avec les adaptations nécessaires, aux protonotaires de la même manière qu'aux juges provinciaux

PLAINTÉ

- Lorsque le Conseil de la magistrature traite une plainte portée contre un protonotaire, les dispositions spéciales suivantes s'appliquent :
1. Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un protonotaire. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le protonotaire qui doit remplacer le juge.
 2. Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.
 3. Les recommandations du sous-comité concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, auquel les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

Plainte contre le juge en chef ou certains autres juges

par. 51.2 (8)

simultanée des témoignages, des observations ou des discussions qui ont lieu dans l'autre langue et à une traduction des documents déposés ou des motifs ou rapports rédigés dans l'autre langue.

par. 50 (1)(a) et (b)

Si le juge en chef de la Cour de justice de l'Ontario fait l'objet d'une plainte, le juge en chef de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise. Le juge en chef adjoint de la Cour de justice de l'Ontario nommé au Conseil préside les réunions et les audiences du Conseil au lieu du juge en chef et nomme les membres temporaires du Conseil jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

par. 50 (1)(c)

Tout renvoi de la plainte qui serait par ailleurs fait au juge en chef de la Cour de justice de l'Ontario (par un sous-comité des plaintes après son enquête, par le Conseil de la magistrature ou un comité d'examen de celui-ci après son examen du rapport du sous-comité des plaintes ou le renvoi de la plainte ou par le Conseil de la magistrature après une médiation) est fait au juge en chef de la Cour de justice de l'Ontario, jusqu'à ce qu'une décision définitive concernant la plainte contre le juge en chef de la Cour de justice de l'Ontario ait été prise.

par. 50 (2)(a)

plainte ait été prise.

par. 51.2 (3)

L'audience sur une plainte tenue par le Conseil de la magistrature est menée en anglais, mais le plaignant ou le témoin qui parle français ou le juge qui fait l'objet d'une plainte et qui parle français a droit, sur demande, avant l'audience, à une traduction en français des documents qui sont en anglais et qui seront examinés à l'audience; aux services d'un interprète à l'audience; et à l'interprétation simultanée en français des parties de l'audience qui se déroulent en anglais.

par. 51.2 (4)

Le droit à la traduction et aux services d'un interprète s'applique également aux médiations et à l'examen de la question de l'indemnisation, s'il y a lieu.

par. 51.2 (5)

Lorsque le plaignant ou le témoin parle français ou que le juge qui fait l'objet de la plainte parle français, le Conseil de la magistrature peut ordonner que l'audience ou la médiation sur la plainte soit bilingue s'il est d'avis qu'elle peut être menée convenablement de cette manière.

par. 51.2 (6)

Un ordre prévu au paragraphe 5) peut s'appliquer à une partie de l'audience ou de la médiation, auquel cas les paragraphes 7) et 8) ci-dessous s'appliquent avec les adaptations nécessaires.

Au cours d'une audience ou d'une médiation bilingue :

- a) les témoignages oraux et les observations orales peuvent être présentés en français ou en anglais et ils sont consignés dans la langue de présentation;
- b) les documents peuvent être déposés dans l'une ou l'autre langue;
- c) dans le cas d'une médiation, les discussions peuvent avoir lieu dans l'une ou l'autre langue;
- d) les motifs d'une décision ou le rapport du médiateur, selon le cas, peuvent être rédigés dans l'une ou l'autre langue.

par. 51.2 (7)

Lors d'une audience ou d'une médiation bilingue, si le plaignant ou le juge ne parle qu'une des deux langues, il a droit, sur demande, à l'interprétation

jurisprudence en matière de Droits de la personne pour ce qui est de la définition d'une « invalidité » (ou handicap).

Le Conseil de la magistrature considérera qu'une condition correspond à une invalidité si elle peut nuire à l'aptitude du juge à s'acquitter des obligations essentielles de son poste.

NOTIFICATION DU MINISTRE

S'il est convaincu que la condition répond au critère de qualification d'une invalidité et s'il envisage de rendre une ordonnance pour prendre en compte cette invalidité, le Conseil de la magistrature doit fournir des que possible au Procureur général une copie de la demande de prise en compte de l'invalidité, accompagnée du rapport du sous-comité des besoins spéciaux. Ce rapport doit inclure tous les éléments dont le sous-comité a tenu compte pour formuler son opinion sur les coûts qu'entraînerait la prise en compte des besoins du requérant.

OBSERVATIONS QUANT À UN PRÉJUDICE INJUSTIFIÉ

Le Conseil de la magistrature invitera le ministre à faire des observations, par écrit, sur le fait qu'une ordonnance que le Conseil envisage de rendre pour la prise en compte des besoins d'un juge ayant une invalidité causera ou non un « préjudice injustifié » au ministre du Procureur général ou à tout autre personne touchée par l'ordonnance en question. Le Conseil de la magistrature considérera qu'il appartient au ministre, ou à toute autre personne que l'ordonnance obligerait à tenir compte des besoins du juge, de prouver que cette prise en compte des besoins causerait un préjudice injustifié.

Pour déterminer s'il y a ou non préjudice injustifié, le Conseil de la magistrature s'appuiera sur la jurisprudence en matière de Droits de la personne concernant ce sujet, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

DÉLAI DE RÉPONSE

Le conseil de la magistrature, lorsqu'il avisera le ministre d'une demande de prise en compte des besoins d'un juge, demandera au ministre de répondre dans les trente (30) jours civils suivant la réception de l'avis. Dans ce délai, le ministre avisera le Conseil de la magistrature de son intention de répondre ou non à cette demande. Si le ministre prévoit de faire des observations sur la demande, il doit le faire dans les soixante (60) jours suivant son accusé de réception de la demande et de l'indication de son intention de répondre. Le Conseil de la magistrature préciserà dans son avis au ministre que si celui-ci ne présente pas d'observation et n'accuse pas réception de l'avis, une ordonnance sera rendue pour prendre en compte les besoins spéciaux du juge selon la requête de celui-ci et la conclusion initial du Conseil.

RÉUNION POUR DÉCIDER DU CONTENU L'ORDONNANCE

Lorsque le délai indiqué dans l'avis au ministre s'est écoulé ou, le cas échéant, lorsqu'il reçoit des observations du ministre concernant un « préjudice injustifié » éventuel, le Conseil de la magistrature de l'Ontario doit se réunir des que possible pour décider du contenu de l'ordonnance qu'il va rendre pour prendre en cause les besoins du juge. Dans ses conclusions, le Conseil de la magistrature tiendra compte de la demande et des pièces justificatives présentées par le juge ainsi que des observations, s'il y en a, concernant la question du « préjudice injustifié ».

COPIE DE L'ORDONNANCE

On remettra une copie de l'ordonnance au juge et à toute personne touchée par cette ordonnance dans les dix (10) jours civils suivant la date à laquelle l'ordonnance est rendue.

CONSIDÉRATIONS SPÉCIALES

Plaignants ou juges francophones

Les plaintes contre des juges provinciaux peuvent être portées en français ou en anglais.

par. 51.2 (2)

SOUS-COMITÉ DES BESOINS SPÉCIAUX

Lorsqu'il reçoit une demande, le Conseil convoque un sous-comité (« sous-comité des besoins spéciaux ») du Conseil comprenant deux membres du Conseil, l'un étant juge et l'autre non. Dès que possible, ce sous-comité rencontre le requérant ainsi que toute personne qui, de l'avis du sous-comité, pourrait être ordonnée de tenir compte des besoins du juge; le sous-comité engage les experts et conseillers dont il pourrait avoir besoin pour formuler une opinion sur les aspects suivants et en faire part au Conseil :

- la durée pendant laquelle les dispositions matérielles ou le service seraient requis pour tenir compte de l'invalidité du juge;

- le coût approximatif des dispositions matérielles ou du service requis pour tenir compte de l'invalidité du juge pendant la durée que ces dispositions ou ce service seraient requis (p. ex., quotidien, hebdomadaire, mensuel, annuel).

RAPPORT DU SOUS-COMITÉ DES BESOINS SPÉCIAUX

Le sous-comité des besoins spéciaux doit inclure dans le rapport qu'il présente au Conseil tous les éléments dont il a tenu compte pour formuler son opinion sur les coûts qu'entraînerait la prise en compte des besoins du requérant.

Si, après avoir rencontré le requérant, le sous-comité est d'avis que celui-ci ou celles-ci ne souffre pas d'une invalidité, il doit en informer le conseil dans son rapport. Le Conseil de la magistrature doit se réunir dès que possible afin d'examiner la demande du requérant et le rapport du sous-comité des besoins spéciaux et déterminer si la demande entre dans le cadre d'une obligation prévue par la loi de tenir compte des besoins spéciaux sans préjudice injustifié.

CRITÈRE DE QUALIFICATION EN TANT QU'INVALIDITÉ

Pour déterminer si une ordonnance de prise en compte de l'invalidité d'un juge est justifiée ou non, le Conseil de la magistrature s'appuiera sur la

ORDONNANCE DE PRISE EN COMPTE RENDUE À L'ISSUE D'UNE AUDIENCE

Si, après avoir tenu une audience portant sur une plainte, le Conseil de la magistrature conclut que le juge qui faisait l'objet de la plainte n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste, mais qu'il serait en mesure de le faire s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

par 51.6 (13)

DIRECTIVES ET RÈGLES DE PROCÉDURE

Les directives et règles de procédures qui suivent ont été établies par le Conseil de la magistrature de l'Ontario relativement à la prise en compte des invalidités.

PRÉSENTATION DE LA REQUÊTE PAR ÉCRIT

Un juge qui souhaite que ses besoins soient pris en compte doit présenter une requête écrite contenant les renseignements suivants :

- une description de l'invalidité à prendre en compte;
- une description des obligations essentielles du poste pour lesquelles la prise en compte des besoins du juge est nécessaire;
- une description des dispositions matérielles ou du service requis pour tenir compte de l'invalidité du juge;

- une lettre signée par un docteur ou un autre professionnel de la santé qualifié (chiropraticien, physiothérapeute, etc.) justifiant la demande du juge;

- la demande et les pièces justificatives ne peuvent pas être utilisées, sans le consentement du requérant, aux fins d'une enquête ou d'une audience autre que l'audience tenue pour examiner la question de la prise en compte des besoins du juge;

- le Conseil de la magistrature de l'Ontario ne peut divulguer ou rendre publics la demande et les pièces justificatives sans le consentement du requérant.

DROIT DE VOTE DU PRÉSIDENT

Le président a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

par. 49 (10)

QUORUM

Huit membres du Conseil de la magistrature, y compris le président, constituent le quorum pour les réunions qui portent sur une demande de prise en compte d'une invalidité. Au moins la moitié des membres présents doivent être des juges et au moins quatre autres membres ne doivent pas être des juges.

par. 49 (13)

AIDE D'EXPERTS

Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider.

par. 49 (21)

DOSSIERS CONFIDENTIELS

Le Conseil de la magistrature ou un sous-comité peut ordonner que tout renseignement ou document relatif à une médiation ou à une réunion ou audience du Conseil qui a été tenue à huis clos soit confidentiel et ne soit pas divulgué ni rendu public. Ceci s'applique que les renseignements ou les documents soient en la possession du Conseil de la magistrature, du procureur général ou d'une autre personne. Le Conseil de la magistrature ou son sous-comité ne peut pas interdire la divulgation de renseignements ou de documents dont la divulgation par le Conseil de la magistrature est exigée par la *Loi sur les tribunaux judiciaires* ou qui n'ont pas été traités comme des documents ou renseignements confidentiels et n'ont pas été préparés exclusivement aux fins de la médiation ou d'une réunion ou d'une audience du Conseil.

par. 49 (24), (25) et (26)

Le Conseil de la magistrature établit et rend publiques ses propres règles de procédure, y compris... des directives et les règles de procédure relatives à la prise en compte des invalidités.

par. 51.1 (1)

moins qu'il ne soit tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du ou de la juge dans la mesure qui permette à celui-ci ou celle-ci de s'acquitter de ces obligations.

par. 45 (2)

PRÉJUDICE INJUSTIFIÉ

Le paragraphe 45 (2) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

par. 45 (3)

DIRECTIVES ET RÈGLES DE PROCÉDURE

Lorsqu'il traite des requêtes prévues au présent article, le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

par. 45 (4)

PARTICIPATION

Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe 45 (2) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

par. 45 (5)

LA COURONNE EST LIÉE

L'ordonnance rendue par le Conseil de la magistrature pour tenir compte des besoins d'un juge lie la Couronne.

par. 45 (6)

PRÉSIDENT DES RÉUNIONS

Le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel désigné par le juge en chef, préside les réunions qui portent sur la prise en compte d'une invalidité.

par. 49 (8)

MODIFICATIONS APPORTÉES À LA LOI SUR L'ACCÈS À L'INFORMATION ET LA PROTECTION DE LA VIE PRIVÉE

L'article 65 de la Loi sur l'accès à l'information et la protection de la vie privée est modifié par adjonction des paragraphes suivants :

(4) La présente loi ne s'applique pas à quoi que ce soit qui est compris dans l'évaluation du rendement d'un juge prévue à l'article 51.11 de la Loi sur les tribunaux judiciaires ni aux renseignements recueillis relativement à l'évaluation.

(5) La présente loi ne s'applique pas à un document du Conseil de la magistrature de l'Ontario, qu'il soit en la possession de celui-ci ou du procureur général, si l'une quelconque des conditions suivantes s'applique :

1. Le Conseil de la magistrature ou son sous-comité a ordonné que le document ou les renseignements qu'il y sont contenus ne soient pas divulgués ni rendus publics.
2. Le Conseil de la magistrature a par ailleurs déterminé que le document est confidentiel.
3. Le document a été préparé relativement à une réunion ou une audience du Conseil de la magistrature qui s'est tenue à huis clos.

PRISE EN COMPTE DES INVALIDITÉS

REQUÊTE D'ORDONNANCE

Le juge provincial qui croit ne pas être en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à moins qu'il ne soit tenu compte de ses besoins peut présenter une requête au Conseil de la magistrature pour que soit rendue une ordonnance pour qu'il soit tenu compte de ces besoins.

OBLIGATION DU CONSEIL DE LA MAGISTRATURE

Si le Conseil de la magistrature conclut qu'un ou une juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à

dans le rapport au procureur général ou, si l'audience s'est tenue à huis clos, le juge ne doit pas être identifié dans le rapport, à moins que le Conseil de la magistrature n'ordonne que son nom soit divulgué dans le rapport conformément aux critères établis aux termes du paragraphe 51.6 (8).

par. 51.6 (19)

INTERDICTION D'IDENTIFIER LE JUGE

Si, au cours de l'audience sur une plainte, le Conseil de la magistrature a rendu une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte, conformément au paragraphe 51.6 (10) et aux critères établis par le Conseil de la magistrature, et que le Conseil rejette ultérieurement la plainte en concluant qu'elle n'était pas fondée, le juge ne doit pas être identifié dans le rapport sans son consentement et le Conseil de la magistrature ordonne que les renseignements relatifs à la plainte qui pourraient identifier le juge ne soient jamais rendus publics sans le consentement de celui-ci.

par. 51.6 (20)

ORDONNANCE DE NON-DIVULGATION

Le Conseil de la magistrature ou un sous-comité des plaintes peut ordonner que tout renseignement ou document relatif à une médiation ou à une réunion ou audience du Conseil qui a été tenue à huis clos soit confidentiel et ne soit pas divulgué ni rendu public, que les renseignements ou les documents soient en la possession du Conseil de la magistrature, du procureur général ou d'une autre personne.

par. 49 (24) et (25)

EXCEPTION

Les dispositions énoncées ci-dessus ne s'appliquent pas aux renseignements ni aux documents dont la divulgation par le Conseil de la magistrature est exigée par la Loi sur les tribunaux judiciaires ou qui n'ont pas été traités comme des documents ou des renseignements confidentiels et n'ont pas été préparés exclusivement aux fins de la médiation ou d'une réunion ou d'une audience du Conseil.

par. 49 (26)

huis clos, conformément aux paragraphes 51.4 (6), 51.4 (17) et (18). Le Conseil de la magistrature a pour politique, conformément aux paragraphes 51.4 (21) et (22), de ne pas confirmer ni nier qu'il a été saisi d'une plainte donnée, comme le permet le paragraphe 51.3 (5), à moins que le Conseil de la magistrature, ou un comité d'audience de celui-ci, n'ait déterminé que la plainte fera l'objet d'une audience publique.

ENQUÊTE À HUIS CLOS PAR UN SOUS-COMITÉ DES PLAINTES

L'enquête menée sur une plainte par un sous-comité des plaintes se déroule à huis clos. La *Loi sur l'exercice des compétences légales* ne s'applique pas aux activités du sous-comité liées à l'enquête sur une plainte.

par. 51.4 (6) et (7)

TRAVAUX À HUIS CLOS DU COMITÉ D'EXAMEN

Le Conseil de la magistrature, ou un comité d'examen de celui-ci :

- examine le rapport du sous-comité des plaintes, à huis clos, et peut approuver la décision du sous-comité;

- peut exiger du sous-comité des plaintes qu'il renvoie la plainte au Conseil.

par. 51.4 (17)

Si la plainte est renvoyée au Conseil par un sous-comité des plaintes, le Conseil de la magistrature, ou un comité d'examen de celui-ci, l'examine, à huis clos, et peut, selon le cas :

- tenir une audience;
- rejeter la plainte;
- renvoyer la plainte au juge en chef (en assortissant ou non le renvoi de conditions);
- renvoyer la plainte à un médiateur.

par. 51.4 (18)

RÉVÉLATION DE L'IDENTITÉ DU JUGE AU COMITÉ D'EXAMEN

Si le sous-comité renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience, l'identité du plaignant et celle du juge

qui fait l'objet de la plainte peuvent être révélées au Conseil de la magistrature, ou à un comité d'examen de celui-ci, et la plainte est examinée à huis clos.

par. 51.4 (16) et (17)

POSSIBILITÉ DE TENIR L'AUDIENCE À HUIS CLOS

Le Conseil de la magistrature peut tenir la totalité ou une partie de l'audience à huis clos s'il décide, conformément aux critères établis aux termes du paragraphe 51.1 (1), que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique.

par. 51.6 (7)

INTERDICTION DE DIVULGUER LE NOM DU JUGE

Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

par. 51.6 (8)

ORDONNANCE INTERDISANT LA PUBLICATION

Dans des circonstances exceptionnelles et conformément au paragraphe 51.1 (1), le Conseil de la magistrature peut rendre une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte.

par. 51.6 (10)

CRITÈRES ÉTABLIS

On trouvera aux pages B-11 ci-dessus les critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1) relativement aux paragraphes 51.6 (7), (8) et (10).

RAPPORT AU PROCUREUR GÉNÉRAL

Si le plaignant ou un témoin a demandé que son identité soit dissimulée au cours de l'audience et qu'une ordonnance a été rendue en ce sens aux termes du paragraphe 51.6 (9), il ne doit pas être identifié

REJET DE LA PLAINTÉ À L'ISSUE D'UNE AUDIENCE

Si la plainte est rejetée à l'issue d'une audience, le Conseil de la magistrature recommande au procureur général que le juge soit indemnisé pour ses frais pour services juridiques et indique le montant de l'indemnité.

par. 51.7 (5)

DIVULGATION DU NOM

Dans sa recommandation au procureur général, le Conseil de la magistrature fournit le nom du juge, mais le procureur général ne doit pas le divulguer à moins qu'il n'y ait eu une audience publique sur la plainte ou que le Conseil n'ait, par ailleurs, rendu public le nom du juge.

par. 51.7 (6)

MONTANT ET VERSEMENT DE L'INDEMNITÉ

Le montant de l'indemnité recommandé peut se rapporter à tout ou partie des frais pour services juridiques du juge et est calculé selon un taux pour services juridiques qui ne dépasse pas le taux maximal normalement prévu par le gouvernement de l'Ontario pour des services similaires. Le procureur général verse l'indemnité au juge conformément à la recommandation.

par. 51.7 (7) et (8)

CONFIDENTIALITÉ ET PROTECTION DE LA VIE PRIVÉE

RENSEIGNEMENTS AU PUBLIC

À la demande de toute personne, le Conseil de la magistrature peut confirmer ou nier qu'il a été saisi d'une plainte donnée.

par. 51.3 (5)

POLITIQUE DU CONSEIL DE LA MAGISTRATURE

L'enquête du sous-comité des plaintes sur une plainte est tenue à huis clos, et son rapport sur la plainte ou le renvoi de la plainte au Conseil de la magistrature, ou à un comité d'examen de celui-ci, est examiné à

Cour de justice de l'Ontario. Il s'applique aussi à un juge en chef ou un juge en chef adjoint, que le Conseil de la magistrature a maintenu en fonction comme juge en chef ou juge en chef adjoint de la Cour de justice de l'Ontario, ou comme juge provincial.

par. 51.8 (4)

INDEMNITÉ

À L'ISSUE D'UNE DÉCISION CONCERNANT UNE PLAINTÉ

Lorsqu'il a traité une plainte portée contre un juge provincial, le Conseil de la magistrature étudie la question de savoir si le juge devrait être indemnisé, en totalité ou en partie, pour les frais pour services juridiques qu'il a engagés relativement à la démarche suivie en rapport avec la plainte, y compris l'examen et l'enquête par un sous-comité des plaintes, l'examen du rapport d'un médiateur par le Conseil de la magistrature, ou un comité d'examen de celui-ci, l'audience tenue sur une plainte par le Conseil de la magistrature, ou un comité d'examen de celui-ci, et les services juridiques en rapport avec la question de l'indemnisation. S'il tient une audience sur la plainte, le Conseil de la magistrature lui joint l'examen de la question de l'indemnisation.

par. 51.7 (1) et (2)

EXAMEN PUBLIC OU À HUIS CLOS

L'examen de la question de l'indemnisation est ouvert au public s'il y a eu une audience publique sur la plainte; sinon, l'examen se fait à huis clos.

par. 51.7 (3)

RECOMMANDATION

S'il est d'avis que le juge devrait être indemnisé, le Conseil de la magistrature fait une recommandation en ce sens au procureur général, laquelle recommandation indique le montant de l'indemnité.

par. 51.7 (4)

Destitution des fonctions

DESTITUTION

Un juge provincial ne peut être destitué que si les conditions suivantes sont réunies :

- a) une plainte a été portée à son sujet devant le Conseil de la magistrature;
- b) le Conseil de la magistrature, à l'issue d'une audience, recommande au procureur général la destitution du juge en raison du fait qu'il est devenu incapable de remplir convenablement ses fonctions ou inhabile pour l'une des raisons suivantes :

- (i) il est inapte, en raison d'une invalidité, à s'acquitter des obligations essentielles de son poste (si une ordonnance pour qu'il soit tenu compte de ses besoins ne remédierait pas à l'incapacité ou ne pourrait être rendue parce qu'elle causerait un préjudice injustifié à la personne à laquelle il incomberait de tenir compte de ces besoins, ou a été rendue mais n'a pas remédié à l'incapacité);
- (ii) il a eu une conduite incompatible avec l'exercice convenable de ses fonctions;
- (iii) il n'a pas rempli les fonctions de sa charge.

par. 51.8 (1)

DÉPÔT DE LA RECOMMANDATION

Le procureur général dépose la recommandation du Conseil de la magistrature devant l'Assemblée législative. Si celle-ci ne siège pas, il la dépose dans les quinze jours qui suivent le début de la session suivante.

par. 51.8 (2)

DÉCRET DE DESTITUTION

Le lieutenant-gouverneur peut prendre un décret en vue de la destitution d'un juge provincial sur demande de l'Assemblée législative.

par. 51.8 (3)

APPLICATION

Cet article s'applique aux juges provinciaux qui n'ont pas encore atteint l'âge de la retraite et aux juges provinciaux dont le maintien en fonction après l'âge de la retraite a été approuvé par le juge en chef de la

INTERDICTION D'IDENTIFIER LE JUGE

Si, au cours de l'audience sur une plainte, le Conseil de la magistrature a rendu une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte, aux termes du paragraphe 51.6 (10) et conformément aux critères établis par le Conseil de la magistrature (se reporter à la page B-1 ci-dessus) et que le Conseil de la magistrature rejette ultérieurement la plainte en concluant qu'elle n'était pas fondée, le juge ne doit pas être identifié dans le rapport au procureur général sans son consentement et le Conseil de la magistrature ordonne que les renseignements relatifs à la plainte qui pourraient identifier le juge ne soient jamais rendus publics sans le consentement de celui-ci.

par. 51.6 (20)

Ordonnance pour qu'il soit tenu compte des besoins du juge

Si un facteur de la plainte était qu'une invalidité influe sur le fait que le juge n'est pas en mesure de s'acquitter des obligations essentielles du poste, que cette plainte soit rejetée ou qu'elle donne lieu à quelque autre décision à l'exception d'une recommandation au procureur général de destitution du juge, mais que le juge serait en mesure de s'en acquitter s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations. Le Conseil de la magistrature ne peut rendre cette ordonnance s'il est convaincu que ce fait causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

Le Conseil de la magistrature ne doit pas rendre une ordonnance pour qu'il soit tenu compte des besoins du juge qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

Une ordonnance pour qu'il soit tenu compte des besoins d'un juge rendue par le Conseil de la magistrature lie la Couronne.

par. 51.6 (13), (14), (15), (16) et (17)

(e) décision sur toute revendication de privilège de non-divulgaration à l'égard des éléments de preuve qu'il est prévu de présenter lors de l'audience;

(f) toute question relative aux échecs.

(2) Aucune requête concernant l'une quelconque des mesures de redressement visées dans cet article ne peut être présentée au cours de l'audience sans l'autorisation du Comité d'audience, à moins qu'elle ne porte sur la façon dont l'audience est conduite.

(3) Le Comité d'audience peut, pour tout motif qu'il estime approprié, réduire la limite de temps prévue dans les présentes règles pour la présentation des requêtes avant une audience.

19. Le Comité fixe, dès que raisonnablement possible, la date et le lieu pour la présentation, par les deux parties, de toute requête soumise aux termes du paragraphe 19.1) et prend une décision à ce sujet dès que raisonnablement possible.

APRÈS L'AUDIENCE

Prise d'une décision à l'issue d'une audience

DÉCISION

Une fois qu'il a terminé l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclu ou non que la plainte n'est pas fondée ou, s'il conclut qu'il y a eu incompétence de la part du juge, il peut, selon le cas :

a) donner un avertissement au juge;

b) réprimander le juge;

c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;

d) ordonner que le juge prenne des dispositions précises, telles qu'il lui conviendrait, pour continuer le traitement, comme condition pour continuer de siéger à titre de juge;

e) suspendre le juge avec rémunération, pendant une période que le juge juge appropriée;

f) suspendre le juge sans rémunération mais avec avantages sociaux, pendant une période maximale de trente jours; ou

g) recommander au procureur général la destitution du juge (conformément à l'article 51.8).

COMBINAISON DE SANCTIONS

Le Conseil de la magistrature peut adopter toute combinaison des sanctions susmentionnées, sauf la recommandation au procureur général de destitution du juge, qui ne peut être combinée avec aucune autre sanction.

par. 51.6 (12)

Rapport au procureur général

RAPPORT

Le Conseil de la magistrature peut présenter au procureur général un rapport sur la plainte, l'enquête, l'audience et la décision (sous réserve d'une ordonnance rendue par le Conseil de la magistrature au sujet du maintien du caractère confidentiel des documents) et le procureur général peut rendre le rapport public s'il est d'avis qu'il y a de l'intérêt public.

par. 51.6 (18)

DISSIMULATION DE L'IDENTITÉ

Si le plaignant ou un témoin a demandé que son identité soit dissimulée au cours de l'audience et qu'une ordonnance a été rendue aux termes du paragraphe 51.6 (9), il ne doit pas être identifié dans le rapport au procureur général ou, si l'audience s'est tenue à huis clos, le juge ne doit pas être identifié dans le rapport, à moins que le Conseil de la magistrature n'ordonne que son nom soit divulgué dans le rapport conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.6 (8) (se reporter à la page B-11 ci-dessus).

par. 51.6 (19)

CONFÉRENCE PRÉPARATOIRE

14. Le Comité peut ordonner de tenir une conférence préparatoire devant un juge qui est membre du Conseil mais ne fait pas partie du Comité qui entendra les accusations portées contre l'intime, afin de limiter les points en litige et de promouvoir un règlement à l'amiable.

L'AUDIENCE

15. Pour plus de certitude, l'intime a le droit de se faire représenter par un avocat ou d'agir en son propre nom pour toute audience tenue conformément à ce code.

16. Si l'avocat chargé de la présentation ou l'intime en fait la demande à un moment quelconque, le Comité peut exiger que quelconque, par assignation, fasse un témoignage sous serment ou une déclaration lors de l'audience et présente, à titre d'éléments de preuve, tout document ou objet, que le Comité précise, qui est en rapport avec la question faisant l'objet de l'audience et admissible à l'audience.
- (1) Toute assignation ordonnée aux termes du présent article doit être présentée sous la forme prescrite dans le paragraphe 12(2) de la Loi sur l'exercice des compétences légales.

17. L'audience est tenue devant un comité composé de membres du Conseil qui n'ont pas participé au sous-comité des plaintes chargé d'enquêter sur la plainte ni au comité d'examen qui a examiné le report du sous-comité des plaintes.

- (1) Les directives suivantes s'appliquent à la conduite de l'audience à moins que le Comité, sur motion présentée par une autre partie ou par consentement, n'en décide autrement.
- (a) Tous les témoignages doivent être faits sous serment, affirmation solennelle ou promesse.
- (b) L'avocat chargé de la présentation doit ouvrir l'audience par une déclaration préliminaire et poursuivre en présentant les éléments de preuve à l'appui des accusations connues dans l'avis d'audience, par interrogation directe des témoins.
- (c) L'avocat représentant l'intime peut faire une déclaration préliminaire immédiatement après la déclaration préliminaire de l'avocat chargé de la

- présentation ou après la présentation des éléments de preuve de celui-ci. L'intime peut ensuite présenter ses propres éléments de preuve.
- (d) Tous les témoins peuvent être contre-interrogés par l'avocat de la partie adverse puis être interrogés à nouveau au besoin.
- (e) L'audience doit faire l'objet d'un compte-rendu sténographique et une transcription doit en être fournie sur demande. Si l'avocat de l'intime en fait la demande, on doit lui fournir la transcription de l'audience gratuitement et dans un délai raisonnable.
- (f) Tant l'avocat chargé de la présentation que l'intime peuvent présenter et proposer au comité d'audience des constatations, des conclusions, des recommandations ou des ébauches de décisions.
- (g) En conclusion de l'audience, l'avocat chargé dans l'ordre déterminé par le Conseil, une déclaration faisant la synthèse des éléments de preuve et de toute question de droit soulevée par ces éléments.

DÉCISIONS PRÉALABLES À L'AUDIENCE

18. Au plus tard 10 jours avant la date fixée pour le début de l'audience, l'une ou l'autre des parties peut présenter au comité d'audience une requête concernant une question de procédure ou autre qui doit faire l'objet d'une décision avant l'audience.
- (1) Sans limiter la portée générale de ce qui précède, ces requêtes peuvent porter sur les points suivants :
- (a) objection quant à la compétence du Conseil d'instruire la plainte;
- (b) résolution de toute question relative à des craintes raisonnables de partialité personnelle ou institutionnelle de la part du Comité;
- (c) objection quant à la suffisance de divulgation de la part l'avocat chargé de la présentation;
- (d) décision sur une question de droit quelconque afin d'accélérer le déroulement de l'audience;

Une preuve de la signification doit être conservée dans les dossiers du Conseil.

RÉPONSE

(1) L'intimé peut signifier à l'avocat chargé de la présentation et déposer auprès du Conseil une réplique aux accusations rapportées dans l'avis d'audience.

(2) La réponse peut contenir tous les détails des faits sur lesquels l'intimé s'appuie.

(3) Le répondant peut, en tout temps, avant ou durant l'audience, signifier à l'avocat chargé de la présentation et auprès du Conseil une réplique modifiée.

(4) Le fait que l'intimé ne dépose aucune réplique ne doit pas être considéré comme son admission d'une accusation quelconque portée contre lui à son encontre.

DIVULGATION

10. Avant l'audience, l'avocat chargé de la présentation doit faire parvenir à l'intimé ou à son avocat les nom et adresse de tous les témoins que l'on sait au courant des faits pertinents ainsi qu'une copie de toutes les déclarations faites par le témoin et des résumés des entrevues avec le témoin avant l'audience.

11. L'avocat chargé de la présentation doit aussi fournir, avant l'audience, tous les documents non privilégiés en sa possession se rapportant aux accusations mentionnées dans l'avis d'audience.

12. Le Comité d'audience peut interdire à l'avocat chargé de la présentation d'appeler à l'audience un témoin dont le nom et l'adresse, s'ils sont connus, ou les déclarations ou le résumé des entrevues, n'auraient pas été communiqués à l'intimé avant l'audience.

13. La partie V s'applique, avec les adaptations nécessaires, à tout renseignement porté à l'attention de l'avocat chargé de la présentation après qu'il ait communiqué l'information conformément à cette partie.

la présentation de l'exposé des faits à l'encontre de l'intimé.

3. L'avocat-conseil engagé par le Conseil agit indépendamment de celui-ci.

4. Le mandat de l'avocat-conseil engagé dans ce contexte n'est pas d'essayer d'obtenir une décision particulière à l'encontre d'un intimé, mais de veiller à ce que la plainte portée contre le juge soit évaluée de façon rationnelle et objective afin de parvenir à une décision juste.

5. Pour plus de certitude, l'avocat chargé de la présentation ne doit conseiller le Conseil sur aucune des questions qui sont soumises à celui-ci. Toutes les communications entre l'avocat chargé de la présentation et le Conseil doivent, dans le cas de communications directes, se faire en présence de l'avocat représentant l'intimé ou, dans le cas de communications écrites, avec copie aux intimés.

6. L'audience doit être précédée d'un avis d'audience conformément à cette section.

7. L'avocat chargé de la présentation doit rédiger un avis d'audience

(1) L'avis d'audience doit contenir les éléments suivants :

- (a) détails des accusations portées à l'encontre de l'intimé;
- (b) référence à la loi en vertu de laquelle l'audience sera tenue;
- (c) déclaration indiquant la date, l'heure et le lieu de l'audience;
- (d) déclaration indiquant l'objet de l'audience;
- (e) déclaration précisant que si l'intimé n'est pas présent à l'audience, le Comité peut tenir l'audience en son absence et l'intimé n'aura droit à aucun autre avis de l'instance.

8. L'avocat chargé de la présentation doit prendre les dispositions nécessaires pour que l'avis d'audience soit signifié en personne à l'intimé ou, si le comité chargé de l'audience adopte une motion à cet effet, par un autre moyen qu'une signification à personne.

CODE DE PROCÉDURE POUR LES AUDIENCES

pour que le dossier soit traité comme s'il s'agit d'une nouvelle plainte. Le sous-comité des plaintes doit être composé de membres du Conseil de la magistrature qui ne font pas partie du comité d'audience de la plainte.

PRÉAMBULE

Ces règles de procédure s'appliquent à toutes les audiences du Conseil de la magistrature organisées en vertu de l'article 51.6 de la *Loi sur les tribunaux judiciaires* et sont élaborées et rendues publiques en vertu de la disposition 51.1 (1) 6 de la *Loi sur les tribunaux judiciaires*.

Ces règles de procédure doivent être interprétées libéralement afin d'assurer que chaque audience donne lieu à une décision juste et basée sur les mérites de la cause.

DÉFINITIONS

1. À moins que le contexte n'en indique autrement, les termes utilisés dans ce code ont la signification qui leur est donnée dans la *Loi sur les tribunaux judiciaires*.
- (1) Dans ce code,

- (a) La « Loi » est la *Loi sur les tribunaux judiciaires*, L.R.O. 1990, chap. C. 43, telle que modifiée.
- (b) Le « comité » est le comité chargé de l'audience, créé en vertu du paragraphe 49 (16) de la Loi.
- (c) « L'intime » est le juge à l'encontre de qui il est ordonné de tenir une audience en vertu de l'alinéa 51.4 (18)(a) de la Loi.
- (d) « L'avocat chargé de la présentation » est l'avocat chargé par le Conseil de la préparation et de la présentation de l'exposé des faits à l'encontre d'un intime.

PRÉSENTATION DES PLAINTES

2. Lorsqu'il ordonne de tenir une audience concernant une plainte portée contre un juge, le Conseil engage un avocat-conseil pour la préparation et

Les membres du Conseil de la magistrature examinent les critères suivants avant de décider s'il est approprié de révéler publiquement le nom d'un juge même si l'audience s'est tenue à huis clos:

- a) le juge en fait la demande;
- b) il y va de l'intérêt public.

ORDONNANCE INTERDISANT LA PUBLICATION DU NOM D'UN JUGE, EN ATTENDANT UNE DÉCISION CONCERNANT UNE PLAINTÉ – CRITÈRES

Dans des circonstances exceptionnelles et conformément aux critères établis aux termes du paragraphe 51.1(1), le Conseil de la magistrature peut rendre une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte.

par. 51.6 (10)

Les membres du Conseil de la magistrature examinent les critères suivants pour déterminer quand le Conseil de la magistrature peut rendre une ordonnance interdisant, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte, en attendant une décision concernant une plainte :

- a) des questions intéressant la sécurité publique pourraient être révélées;
- b) des questions financières ou personnelles de nature intime ou d'autres questions qui pourraient être révélées à l'audience, qui sont telles qu'en regard aux circonstances, l'avantage qu'il y a ne pas les révéler dans l'intérêt de la personne concernée ou dans l'intérêt public l'emporte sur le principe de la publicité des audiences.

NOUVELLE PLAINTÉ

Si, au cours de l'audience, de nouveaux faits sont divulgués qui, s'ils étaient portés à la connaissance d'un membre du Conseil de la magistrature, pourraient constituer une allégation de mauvaise conduite d'un juge provincial qui n'est pas couverte par la plainte faisant l'objet de l'audience, le registraire rédige un résumé des détails de la plainte et l'envoie à un sous-comité des plaintes du Conseil de la magistrature

AUDIENCES

COMMUNICATION PAR LES MEMBRES

Les membres du Conseil de la magistrature qui participent à l'audience ne doivent pas communiquer ni directement ni indirectement avec une partie, un avocat, un mandataire ou une autre personne, pour ce qui est de l'objet de l'audience, sauf si toutes les parties et leurs avocats ou mandataires ont été avisés et ont l'occasion de participer. Cette interdiction n'a pas pour effet d'empêcher le Conseil de la magistrature d'engager un avocat pour se faire aider, auquel cas la nature des conseils donnés par l'avocat est communiquée aux parties pour leur permettre de présenter des observations quant au droit applicable.

par. 51.6 (4) et (5)

PARTIES À L'AUDIENCE

Le Conseil de la magistrature détermine quelles sont les parties à l'audience.

par. 51.6 (6)

TOTALITÉ OU PARTIE DE L'AUDIENCE À HUIS CLOS

Les audiences du Conseil de la magistrature sur une plaine et ses réunions portant sur l'examen de la question de l'indemnisation sont ouvertes au public, à moins que le comité d'audience ne détermine, conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1), qu'il existe des circonstances exceptionnelles et que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique, auquel cas il peut tenir la totalité ou une partie de l'audience à huis clos.

par. 49 (11) et 51.6 (7)

La Loi sur l'exercice des compétences légales (L.E.C.L.) s'applique à une audience tenue par le Conseil de la magistrature, sous réserve des dispositions relatives aux décisions rendues sans audience (art. 4 de la L.E.C.L.) ou aux audiences publiques (par. 9[1] de la L.E.C.L.).

par. 51.6 (2)

par. 51.6 (9)

Si la plainte porte sur une allégation d'inconduite d'ordre sexuel ou de harcèlement sexuel, le Conseil de la magistrature interdit, à la demande d'un plaignant ou d'un autre témoin qui déclare avoir été victime d'une conduite semblable par le juge, la publication de renseignements qui pourraient identifier le plaignant ou le témoin, selon le cas.

AUDIENCE PUBLIQUE OU À HUIS CLOS – CRITÈRES

par. 51.6 (7)

Les membres du Conseil de la magistrature se fondent sur les critères suivants pour déterminer quelles circonstances exceptionnelles peuvent justifier la décision de préserver le maintien du caractère confidentiel et de tenir la totalité ou une partie de l'audience à huis clos :

- a) des questions intéressant la sécurité publique pourraient être révélées;
- b) des questions financières ou personnelles de nature intime ou d'autres questions qui pourraient être révélées à l'audience, qui sont telles qu'en égard aux circonstances, l'avantage qu'il y a à ne pas les révéler dans l'intérêt de la personne concernée ou dans l'intérêt public l'emporte sur le principe de la publicité des audiences.

DIVULGATION DU NOM DU JUGE EN CAS D'AUDIENCE À HUIS CLOS – CRITÈRES

Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

par. 51.6 (8)

COMPOSITION

Les règles suivantes s'appliquent à un comité d'audience établi en vue de la tenue d'une audience aux termes de l'article 51.6 (décision du Conseil de la magistrature) ou de l'article 51.7 (indemnisation) :

- 1) la moitié des membres du comité d'audience, y compris le président, doivent être des juges et la moitié ne doivent pas être des juges;
- 2) un membre, au moins, ne doit être ni juge ni avocat;
- 3) le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel de l'Ontario désigné par le juge en chef, préside le comité d'audience;
- 4) sous réserve des dispositions 1, 2 et 3 ci-dessus, le Conseil de la magistrature peut fixer le nombre des membres du comité d'audience et en déterminer la composition;
- 5) tous les membres du comité d'audience constituent le quorum (par. 49[17]);
- 6) le président du comité d'audience a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau;
- 7) les membres du sous-comité des plaintes qui a enquête sur une plainte ne doivent pas participer à une audience sur celle-ci;
- 8) les membres du comité d'examen qui a reçu et examine la recommandation d'un sous-comité des plaintes à l'égard d'une plainte ne doivent pas participer à une audience sur celle-ci (par. 49[20]).

par. 49 (17), (18), (19) et (20)

POUVOIRS

Un comité d'audience formé par le Conseil de la magistrature aux termes des articles 51.6 ou 51.7 a, à cette fin, les mêmes pouvoirs que le Conseil de la magistrature

par. 49 (16)

(3) l'intérêt public requiert la tenue d'une audience sur la plainte.

Avis de décision

COMMUNICATION DE LA DÉCISION

Le Conseil de la magistrature, ou un comité d'examen de celui-ci, communique sa décision au plaignant et au juge qui fait l'objet de la plainte, en exposant brièvement les motifs dans le cas d'un rejet.

par. 51.4 (20)

PROCÉDURES ADMINISTRATIVES

On trouvera à la page 25-26 du présent document des renseignements détaillés sur les procédures administratives que doit suivre le Conseil de la magistrature au moment d'aviser les parties de sa décision.

COMITÉ D'AUDIENCE

LÉGISLATION APPLICABLE

Toutes les audiences tenues par le Conseil de la magistrature doivent se dérouler conformément à l'article 51.6 de la Loi sur les tribunaux judiciaires. La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature

par. 51.1 (2)

La Loi sur l'exercice des compétences légales (L.E.C.L.) s'applique à toute audience tenue par le Conseil de la magistrature, sous réserve des dispositions relatives aux décisions rendues sans audience (art. 4 de la L.E.C.L.) ou aux audiences publiques (par. 9 [1] de la L.E.C.L.). Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

par. 51.1 (3) et 51.6 (2)

Les règles que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1) s'appliquent à une audience tenue par celui-ci.

par. 51.6 (3)

C) RENVOI DE LA PLAINTÉ AU JUGE EN CHEF

Le comité d'examen renvoie la plainte au juge en chef de la Cour de justice de l'Ontario si la majorité de ses membres estime que le comportement reproché ne justifie pas une autre décision, qu'il y a lieu de croire que la plainte pourrait être fondée et que la décision représentée, de l'avis de la majorité des membres du comité d'examen, un moyen convenable d'informer le juge que sa conduite n'a pas été appropriée dans les circonstances ayant donné lieu à la plainte. Le comité d'examen recommande d'assortir de conditions le renvoi de la plainte au juge en chef de la Cour de justice de l'Ontario si la majorité de ses membres convient qu'il existe une démarche ou une formation complémentaire dont le juge qui fait l'objet de la plainte pourrait bénéficier et si ce dernier y consent, conformément au paragraphe 51.4 (15). Le juge en chef de la Cour de justice de l'Ontario présente par écrit au comité d'examen et au sous-comité des plaintes un rapport sur la décision concernant la plainte.

D) RENVOI DE LA PLAINTÉ À UN MÉDIATEUR

Le comité d'examen renvoie la plainte à un médiateur si le Conseil de la magistrature a établi une procédure de médiation pour les plaignants et les juges qui font l'objet de plaintes, conformément à l'article 51.5 de la *Loi sur les tribunaux judiciaires*. Lorsque le Conseil de la magistrature établit une procédure de médiation, la plainte peut être renvoyée à un médiateur si la majorité des membres du comité d'examen estime que la conduite reprochée ne répond pas aux critères d'exclusion des plaintes qui ne se prêtent pas à la médiation, comme le prévoit le paragraphe 51.5(3) de la Loi sur les tribunaux judiciaires. Jusqu'à ce que le Conseil de la magistrature établisse ces critères, les plaintes sont exclues de la procédure de médiation dans l'une quelconque des circonstances suivantes :

- (1) il existe un déséquilibre important du pouvoir entre le plaignant et le juge, ou il existe un écart si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable;
- (2) la plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motif illicite prévu dans une disposition du *Code des droits de la personne*;

La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, liés à l'examen du rapport du sous-comité des plaintes ou à l'examen d'une plainte qui lui a été renvoyée par le sous-comité.

par. 51.4 (19)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

par. 51.1 (3)

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'examen des plaintes qui lui sont renvoyées par un sous-comité des plaintes, à sa propre demande ou non, et le Conseil de la magistrature, ou un comité d'examen de celui-ci, se conforme aux directives et aux règles de procédure établies à cette fin par le Conseil.

par. 51.4 (22)

DIRECTIVES CONCERNANT LA DÉCISION

A) TENUE D'UNE AUDIENCE

Le comité d'examen ordonne la tenue d'une audience si la majorité de ses membres estime qu'il y a eu une allégation d'inconduite judiciaire qui repose sur des faits et qui, si l'enquêteur la considère digne de foi, pourrait amener à conclure à l'inconduite judiciaire. Si le comité d'examen recommande de tenir une audience, il peut recommander ou non que celle-ci se tienne à huis clos et, le cas échéant, les critères établis par le Conseil de la magistrature devront être respectés (voir la page 18 ci-après).

B) REJET DE LA PLAINTÉ

Le comité d'examen rejette la plainte si la majorité de ses membres estime que l'allégation d'inconduite judiciaire ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure, ou si le comité d'examen est d'avis que la plainte n'est pas justifiée. En général, un comité d'examen ne rejettera pas une plainte sur la base qu'elle est n'est pas justifiée à moins d'être convaincu que les allégations contre le juge provincial ne s'appuient sur aucun fait réel.

Renvoi d'une plainte à un comité d'examen

QUAND PROCÉDER AU RENVOI

Lorsque le sous-comité des plaintes présente son rapport au comité d'examen, le comité peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte afin qu'il l'examine lui-même. Le comité d'examen exige que le sous-comité des plaintes lui renvoie la plainte si les membres du sous-comité ne peuvent s'entendre sur la décision à recommander concernant la plainte ou si la décision recommandée à cet égard est inacceptable pour la majorité des membres du comité d'examen.

par. 51.4 (13), (14) et (17)

POUVOIR D'UN COMITÉ D'EXAMEN

À L'ÉGARD DU RENVOI

Si le sous-comité des plaintes renvoie une plainte au comité d'examen ou si le comité exige que le sous-comité lui renvoie une plainte pour qu'il l'examine lui-même, l'identité du plaignant et celle du juge qui fait l'objet de la plainte peuvent être révélées aux membres du comité d'examen qui examinent la plainte, à huis clos, et qui peuvent, selon le cas :

- tenir une audience;
- rejeter la plainte;
- renvoyer la plainte au juge en chef de la Cour de justice de l'Ontario en assortissant ou non le renvoi de conditions);
- renvoyer la plainte à un médiateur.

par. 51.4 (16) et (18)

DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

Examen du rapport du sous-comité des plaintes

EXAMEN À HUIS CLOS

Le comité d'examen examine le rapport du sous-comité des plaintes, à huis clos, et peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte, auquel cas le comité examine la plainte, à huis clos.

par. 51.4 (17)

PROCÉDURE D'EXAMEN

Le comité d'examen examine la lettre de plainte, les passages pertinents de la transcription (s'il y a lieu), la réponse du juge (s'il y a lieu), etc., dont tous les renseignements identificateurs doivent avoir été supprimés, ainsi que le rapport du sous-comité des plaintes, jusqu'à ce que ses membres soient convaincus que le sous-comité a repéré et examiné les sujets de préoccupation dans son enquête portant sur la plainte et dans la ou les recommandations qu'il a formulées au comité d'examen relativement à la décision concernant la plainte.

Le comité d'examen peut différer sa décision sur la recommandation du sous-comité des plaintes et ajourner ses travaux au besoin afin d'examiner sa décision ou ordonner au sous-comité de poursuivre son enquête et de lui présenter un nouveau rapport. Si les membres du comité d'examen ne sont pas satisfaits du rapport du sous-comité des plaintes, ils peuvent renvoyer la plainte de nouveau au sous-comité pour que celui-ci poursuive son enquête, donner toute autre orientation ou faire au sous-comité toute autre demande qu'ils jugent appropriée. Lorsqu'il est nécessaire de procéder à un vote pour déterminer s'il convient d'accepter ou non la recommandation d'un sous-comité des plaintes, et qu'il y a partage des voix, le président vote de nouveau et il a voix prépondérante.

RÔLE DU COMITÉ D'EXAMEN

Le comité d'examen est formé pour examiner les décisions des sous-comités des plaintes concernant les plaintes et prendre une décision concernant les dossiers de plainte actifs à toutes les réunions ordinaires du Conseil de la magistrature, si les exigences de la loi pertinente relatives au quorum sont respectées.

DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, liées à l'examen du rapport d'un sous-comité des plaintes ou à l'examen d'une plainte qui lui est renvoyée par un sous-comité des plaintes.

par. 51.4 (19)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la *Loi sur l'exercice des compétences légales*.

par. 51.1 (3)

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'examen du rapport présenté par un sous-comité des plaintes à un comité d'examen ou d'une plainte qui lui est renvoyée par un sous-comité des plaintes, et le Conseil de la magistrature, ou un comité d'examen de celui-ci, se conforme aux directives et aux règles de procédure établies à cette fin par le Conseil.

par. 51.4 (22)

INFORMATION À INCLURE

Lorsqu'il renvoie la plainte à un comité d'examen du Conseil, le sous-comité des plaintes doit transmettre au comité d'examen tous les documents, transcriptions, déclarations et autres éléments de preuve dont il a tenu compte au cours de l'enquête sur la plainte, y compris, le cas échéant, la réaction à la plainte du juge concerné. Le comité d'examen tient compte de ces renseignements pour parvenir à une conclusion sur la décision appropriée concernant la plainte.

COMITÉ D'EXAMEN

OBJET

Le Conseil de la magistrature peut former un comité d'examen dans l'un des buts suivants :

- examiner le rapport d'un sous-comité des plaintes;
- examiner une plainte qui lui a été renvoyée par un sous-comité des plaintes;
- examiner le rapport d'un médiateur
- examiner une plainte qui lui est renvoyée à l'issue d'une médiation;
- examiner la question de l'indemnisation;

par. 49 (14)

COMPOSITION

Le comité d'examen se compose de deux juges provinciaux (autres que le juge en chef), d'un avocat et d'un membre du Conseil de la magistrature qui n'est ni juge ni avocat. Aucun des deux membres ayant siégé au sous-comité des plaintes qui a mené l'enquête sur la plainte et formulé la recommandation au comité d'examen ne peut en faire partie. Un des juges, désigné par le Conseil, préside le comité et quatre membres constituent le quorum. Le président du comité d'examen a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

par. 49 (15), (18) et (19)

C) RENVOI DE LA PLAINTÉ À UN MÉDIATEUR

Le sous-comité des plaintes renvoie la plainte à un médiateur si le Conseil de la magistrature a établi une procédure de médiation pour les plaignants et pour les juges qui font l'objet de plaintes, conformément à l'article 51.5 de la *Loi sur les tribunaux judiciaires*. Lorsque le Conseil de la magistrature établit une procédure de médiation, la plainte peut être renvoyée à un médiateur si les deux membres estiment que la conduite reprochée ne répond pas aux critères d'exclusion des plaintes qui ne se prêtent pas à la médiation, comme le prévoit la *Loi sur les tribunaux judiciaires*. Jusqu'à ce que le Conseil de la magistrature établisse ces critères, les plaintes sont exclues du processus de médiation dans les circonstances suivantes :

(1) il existe un déséquilibre important du pouvoir entre le plaignant et le juge, ou il existe un écart si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable;

(2) la plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motif illicite prévu dans une disposition du *Code des droits de la personne*;

(3) l'intérêt public requiert la tenue d'une audience sur la plainte.

par. 51.4 (13) et 51.5

D) RECOMMANDATION DE TENIR UNE AUDIENCE

Le sous-comité des plaintes renvoie la plainte au Conseil de la magistrature, ou à un comité d'examen de celui-ci, et il recommande la tenue d'une audience sur la plainte si elle porte sur une allégation d'inconduite judiciaire qui, de l'avis du sous-comité des plaintes, repose sur des faits et qui, si l'enquêteur la considère digne de foi, pourrait amener à conclure qu'il y a eu inconduite judiciaire.

par. 51.4 (13) et (16)

RECOMMANDATION RELATIVE À

LA TENUE D'UNE AUDIENCE

Si le sous-comité des plaintes recommande de tenir une audience, il peut recommander ou non que celle-ci se tienne à huis clos et, le cas échéant, on se conforme aux critères établis par le Conseil de la magistrature (voir la page 11 ci-après).

E) INDEMNITÉ

Le rapport du sous-comité des plaintes au comité d'examen peut aussi traiter de la question de l'indemnisation du juge pour les frais pour services juridiques qu'il a engagés, le cas échéant, relativement à l'enquête si le sous-comité estime que la plainte doit être rejetée et qu'il a formulé une recommandation en ce sens dans son rapport au Conseil de la magistrature. Le Conseil peut alors recommander au procureur général que le juge soit indemnisé pour les frais pour services juridiques, conformément à l'article 51.7 de la Loi.

par. 51.7 (1)

La décision de recommander ou non que le juge soit indemnisé pour les frais pour services juridiques sera prise au cas par cas.

RENOI D'UNE PLAINTÉ AU CONSEIL

Comme il a été signalé ci-dessus, le sous-comité des plaintes peut également renvoyer la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience sur la plainte. Il n'est pas nécessaire que les deux membres du sous-comité des plaintes conviennent de cette recommandation, et le Conseil de la magistrature, ou un comité d'examen de celui-ci, peut exiger du sous-comité des plaintes qu'il lui renvoie la plainte s'il n'approuve pas la décision recommandée par le sous-comité ou si les membres du sous-comité ne s'entendent pas sur la décision. Si le sous-comité renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience, l'identité du plaignant et celle du juge en cause peuvent être révélées au Conseil de la magistrature, ou à un comité d'examen de celui-ci.

par. 51.4 (16) et (17)

DIRECTIVES ET RÈGLES DE PROCÉDURE

La *Loi sur les règlements* ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la *Loi sur l'exercice des compétences légales*.

par. 51.1 (3)

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du

paragraphe 51.1 (1) relativement à la prise d'une décision concernant une plainte et à la communication au Conseil de la magistrature, ou à un comité d'examen de celui-ci, de la décision du sous-comité des plaintes.

par. 51.4 (21)

PROCÉDURE À SUIVRE

Un membre de chaque sous-comité des plaintes est chargé de communiquer avec le registraire adjoint avant une date précise précédant chaque réunion ordinaire du Conseil de la magistrature pour l'informer, s'il y a lieu, des dossiers attribués au sous-comité sur lesquels ce dernier est prêt à présenter un rapport à un comité d'examen. Le sous-comité des plaintes fournit aussi une copie lisible et remplie en bonne et due forme des pages appropriées de la formule d'admission de la plainte pour chaque dossier sur lequel ils sont prêts à présenter un rapport et indiquent les autres pièces du dossier qui, outre la plainte, doivent être copiées et transmises aux membres du comité d'examen pour qu'il les examine.

Au moins un membre du sous-comité des plaintes est présent lorsque le rapport du sous-comité est présenté au comité d'examen.

AUCUN RENSEIGNEMENT IDENTIFICATOIRE

Le sous-comité des plaintes présente au Conseil de la magistrature un rapport sur sa décision concernant toute plainte qui est rejetée ou renvoyée au juge en chef de la Cour de justice de l'Ontario ou à un médiateur,

par. 51.4 (16)

DÉCISION UNANIME

Le sous-comité des plaintes ne peut rejeter la plainte ou la renvoyer au juge en chef de la Cour de justice de l'Ontario ou à un médiateur que si les deux membres du sous-comité en conviennent, sinon la plainte doit être renvoyée au Conseil de la magistrature.

par. 51.4 (14)

CRITÈRES POUR LES DÉCISIONS RENDUES PAR LE SOUS-COMITÉ DES PLAINTES

A) REJET DE LA PLAINTÉ

Lorsqu'il l'a examinée, le sous-comité des plaintes rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure. Lorsqu'il a terminé son enquête, le sous-comité peut aussi recommander le rejet d'une plainte s'il en arrive à la conclusion que la plainte n'est pas fondée.

par. 51.4 (3) et (13)

B) RENVOI DE LA PLAINTÉ AU JUGE EN CHEF

Le sous-comité des plaintes renvoie la plainte au juge en chef de la Cour de justice de l'Ontario si les circonstances entourant l'inconduite reprochée ne justifient pas une autre décision, qu'il y a lieu de croire que la plainte pourrait être fondée et que la décision constitue, de l'avis du sous-comité des plaintes, un moyen convenable d'informer le juge que sa conduite n'a pas été appropriée dans les circonstances ayant donné lieu à la plainte. Le sous-comité des plaintes assortira de conditions la décision de renvoyer la plainte au juge en chef de la Cour de justice de l'Ontario si, à son avis, il existe une démarche ou une formation complètementaire dont le juge faisant l'objet de la plainte pourrait bénéficier et si ce dernier y consent.

par. 51.4 (13) et (15)

PLAINTÉ CONTRE LE JUGE EN CHEF

ET CERTAINS AUTRES JUGES – RECOMMANDATIONS PROVISOIRES

Si la plainte est portée contre le juge en chef de la Cour de justice de l'Ontario, un juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional qui est membre du Conseil de la magistrature, toute recommandation de suspension, avec rémunération, ou de réaffectation temporaire est présentée au juge en chef de la Cour supérieure de justice, qui peut suspendre ou réaffecter le juge selon la recommandation du sous-comité des plaintes.

par. 51.4 (12)

CRITÈRES POUR LES RECOMMANDATIONS PROVISOIRES DE SUSPENSION OU DE RÉAFFECTATION

Lorsqu'il recommande au juge principal régional compétent de suspendre ou de réaffecter temporairement un juge jusqu'au règlement de la plainte, le sous-comité des plaintes se conforme aux directives et règles de procédure établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1), c'est-à-dire :

- la plainte découle de relations de travail entre le plaignant et le juge, et le plaignant et le juge travaillent au même palais de justice;
- le fait de permettre au juge de continuer à siéger est susceptible de jeter le discrédit sur l'administration de la justice;
- la plainte est assez grave pour qu'il y ait des motifs raisonnables de faire mener une enquête par un organisme chargé de l'exécution de la loi;
- il est évident de l'avis du sous-comité des plaintes que le juge a subi une diminution de ses capacités mentales ou physiques à laquelle il est impossible de remédier ou dont il est impossible de tenir compte raisonnablement.

INFORMATION CONCERNANT LES RECOMMANDATIONS PROVISOIRES

Lorsque le sous-comité des plaintes recommande la suspension ou la réaffectation temporaire du juge jusqu'au règlement de la plainte, les détails des facteurs sur lesquels repose la recommandation du sous-comité doivent être fournis en même temps au juge principal régional et au juge qui fait l'objet de la plainte dans le but d'aider le juge principal régional à prendre sa décision et d'aviser le juge de la plainte dont il fait l'objet et de la recommandation du sous-comité. Lorsque le sous-comité des plaintes ou le comité d'examen propose de recommander la suspension temporaire ou la réaffectation du juge, il peut donner à celui-ci la possibilité de faire valoir son point de vue par écrit en avisant le juge, par signification à per-sonne ou, si ce n'est pas possible, par courrier recom-mandé, de la suspension ou de la réaffectation proposée et des motifs justifiant cette proposition, et en l'informant de son droit de réponse. Si aucune réponse du juge n'est parvenue dans les 10 jours suivant la date de l'envoi de la lettre, la recomman-dation de suspension temporaire ou de réaffectation se poursuit.

**Rapport au comité d'examen
LORSQUE L'ENQUÊTE EST TERMINÉE**

Lorsqu'il a terminé son enquête, le sous-comité des plaintes, selon le cas :

- rejette la plainte;
- renvoie la plainte au juge en chef de la Cour de justice de l'Ontario;
- renvoie la plainte à un médiateur, conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1);
- renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience.

par. 51.4 (13)

RÉPONSE À UNE PLAINTÉ

Si le sous-comité des plaintes souhaite obtenir une réponse du juge, il donne au registraire l'instruction de demander au juge de réagir sur une ou plusieurs questions précises soulevées dans la plainte. Une copie de la plainte, la transcription (s'il y a lieu) et toutes les pièces pertinentes versées au dossier sont transmises au juge avec la lettre sollicitant sa réponse. Le juge dispose de trente jours à partir de la date de la lettre sollicitant sa réponse pour répondre à la plainte. Si aucune réponse n'est reçue avant l'expiration du délai prescrit, les membres du sous-comité des plaintes en sont informés et une lettre de rappel est achevinée au juge par courrier recommandé. Si l'on ne reçoit toujours pas de réponse dans les dix jours suivant la date de la lettre recommandée et que le sous-comité est convaincu que le juge est au courant de la plainte et de tous les détails s'y rapportant, le sous-comité procédera en l'absence de réponse. Toute réponse à une plainte formulée par le juge qui fait l'objet de la plainte à cette étape de la procédure est réputée avoir été donnée sous réserve de tout droit et elle ne pourra pas être utilisée au cours d'une audience.

GÉNÉRALITÉS

La transcription de témoignages et la réponse du juge à la plainte sont transmises par message aux membres du sous-comité des plaintes, à moins que le membres ne donnent des instructions contraires.

Le sous-comité des plaintes peut inviter l'une ou l'autre partie ou l'un ou l'autre témoin, s'il y en a, à le rencontrer ou communiquer avec eux à l'étape de l'enquête. Le secrétaire du Conseil de magistrature transcrit les lettres de plainte qui sont manuscrites et offre aux membres du sous-comité des plaintes les services de secrétariat et de soutien nécessaires.

CONSEILS ET ASSISTANCE

Le sous-comité des plaintes peut donner au registraire l'instruction d'engager des personnes, y compris des avocats, ou de retenir leurs services pour l'aider dans la conduite de son enquête sur une plainte. Le sous-comité des plaintes peut aussi consulter les membres du sous-comité des procédures pour obtenir leur

PLAINTES MULTIPLES

par. 51.4 (5)

apport et leurs conseils au cours de l'enquête menée dans le cadre du traitement de la plainte.

Le registraire remettra toute nouvelle plainte de *nature similaire*, formée contre un juge à l'égard duquel un ou des dossiers de plainte est (sont) déjà ouvert(s), au même sous-comité des plaintes qui mène une enquête sur le ou les dossiers en instance. Une telle mesure garantissant que les membres du sous-comité des plaintes qui mènent une enquête sur une plainte portée contre un juge soient au courant de l'existence d'une plainte similaire, qu'elle soit du même plaignant ou d'un autre, formulée contre le même juge.

Lorsqu'un juge fait l'objet de trois plaintes portées par trois plaignants différents sur une période de trois ans, le registraire porte ce fait à l'attention du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, afin qu'il détermine si les plaintes multiples doivent ou non faire l'objet de conseils au juge de la part du Conseil, du juge en chef adjoint ou du juge principal régional membre du Conseil de la magistrature.

RECOMMANDATION PROVISOIRE DE SUSPENSION OU DE RÉAFFECTATION

Le sous-comité des plaintes peut recommander au juge principal régional compétent la suspension, avec rémunération, du juge qui fait l'objet de la plainte ou l'affectation de celui-ci à un autre endroit, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise. La recommandation est présentée au juge principal régional nommé pour la région à laquelle le juge est affecté, sauf si le juge principal régional est membre du Conseil de la magistrature, auquel cas la recommandation est présentée à un autre juge principal régional. Le juge principal régional peut suspendre ou réaffecter temporairement le juge selon la recommandation du sous-comité. Le pouvoir discrétionnaire qu'a le juge principal régional d'accepter ou de rejeter la recommandation du sous-comité n'est pas assujéti à l'administration ni à la surveillance de la part du juge en chef.

par. 51.4 (8), (9), (10) et (11)

PLAINTES ANTÉRIEURES

Le sous-comité des plaintes limite son enquête à la plainte portée devant lui. La question de l'importance à accorder, s'il y a lieu, aux plaintes antérieures portées contre un juge qui fait l'objet d'une autre plainte devant le Conseil de la magistrature peut être examinée par les membres du sous-comité des plaintes si le registraire, avec l'aide d'un avocat (si le registraire l'estime nécessaire), détermine d'abord que la ou les plaintes antérieures sont très semblables en ce sens qu'il y a preuve de faits similaires et qu'elles l'aideraient à déterminer si la plainte examinée pourrait ou non être fondée.

INFORMATION QUE LE REGISTREUR DOIT OBTENIR

Les membres du sous-comité des plaintes s'efforcent d'examiner les dossiers qui leur ont été attribués, d'en discuter et de déterminer dans un délai d'un mois après la réception d'un dossier si une transcription de témoignages ou une réponse à la plainte est nécessaire. Si le sous-comité des plaintes lui en fait la demande, le registraire doit obtenir pour celui-ci toutes les pièces (transcriptions, bandes audio, dossiers du tribunal, etc.) que le sous-comité souhaite examiner en rapport avec une plainte; les membres du sous-comité n'obtiennent pas eux-mêmes ces pièces.

TRANSCRIPTIONS, ETC.

Compte tenu de la nature de la plainte, le sous-comité peut donner au registraire l'instruction de demander la transcription de témoignages ou leur enregistrement sur bande magnétique dans le cadre de son enquête. Au besoin, on communique avec le plaignant pour déterminer l'étape à laquelle en est la poursuite en justice avant de demander une transcription. Le sous-comité des plaintes peut donner au registraire l'instruction de laisser le dossier en suspens jusqu'à ce que l'affaire portée devant les tribunaux ait été réglée. Si le sous-comité réclame une transcription, les sténographes judiciaires ont comme consigne de ne pas présenter la transcription au juge qui fait l'objet de la plainte pour révision.

décision de renvoyer la plainte au juge en chef, le

sous-comité des plaintes se conforme aux directives et aux règles de procédure établies par le Conseil de la magistrature aux termes du paragraphe 51.5 (1). Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'enquête menée sur une plainte par un sous-comité des plaintes.

par. 51.4 (21)

ACCORD SUR LA FAÇON DE PROCÉDER

Les membres du sous-comité des plaintes examinent le dossier et les pièces (le cas échéant) et en discutent ensemble avant de déterminer la teneur de la plainte et de décider des mesures d'enquête à prendre (demander une transcription, solliciter une réponse, etc.). Aucun membre du sous-comité ne doit prendre quelque mesure d'enquête que ce soit à l'égard d'une plainte lui ayant été attribuée sans d'abord examiner la plainte avec l'autre membre du sous-comité des plaintes et convenir de la démarche à adopter. Si les membres du sous-comité des plaintes ne s'entendent pas sur une mesure d'enquête, ils soumettent la question à un comité d'examen pour obtenir ses conseils et son opinion.

REJET D'UNE PLAINTÉ

Le sous-comité des plaintes rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure.

par. 51.4 (3)

TENUE D'UNE ENQUÊTE

Si la plainte n'est pas rejetée, le sous-comité des plaintes mène les enquêtes qu'il estime appropriées. Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider dans la conduite de son enquête. L'enquête est menée à huis clos. La Loi sur l'exercice des compétences légales ne s'applique pas aux activités du sous-comité des plaintes liées à l'enquête sur une plainte.

par. 51.4 (4), (5), (6) et (7)

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Veuillez noter : À moins d'indication contraire, tous les renvois figurant dans le présent document se rapportent à la Loi sur les tribunaux judiciaires, L.R.O. 1990, dans sa forme modifiée.

PROCÉDURES ADMINISTRATIVES

On trouvera aux pages 25 à 27 du présent document des renseignements détaillés sur les procédures administratives que doivent suivre les membres du sous-comité des plaintes et ceux du comité d'examen.

RAPPORTS D'AVANCEMENT

Les membres du sous-comité des plaintes reçoivent régulièrement par écrit un rapport faisant le point sur la situation des dossiers actifs qui leur ont été attribués. Ces rapports d'avancement sont envoyés par la poste à chaque membre du sous-comité au début de chaque mois. Les membres s'efforcent d'examiner chaque mois, sur réception du rapport d'avancement, les dossiers qui leur ont été attribués et de prendre les mesures nécessaires pour soumettre ces dossiers à l'examen du Conseil de la magistrature dès que possible.

Enquête

LIGNES DIRECTRICES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales;

par. 51.1 (3)

Lorsqu'il mène des enquêtes, recommande provisoirement la suspension ou l'affectation à un autre endroit, prend une décision concernant une plainte à l'issue de son enquête ou assortit de conditions la

PLAINTES

GÉNÉRALITÉS

Toute personne peut porter devant le Conseil de la magistrature une plainte selon laquelle il y aurait eu inconducte de la part d'un juge provincial. Si une allégation d'inconducte est présentée à un membre du Conseil de la magistrature, elle est traitée comme une plainte portée devant celui-ci. Si une allégation d'inconducte contre un juge provincial est présentée à un autre juge ou au procureur général, cet autre juge ou le procureur général, selon le cas, fournit à l'auteur de l'allégation des renseignements sur le rôle du Conseil de la magistrature et sur la façon de porter plainte, et le renvoie au Conseil de la magistrature.

par. 51.3 (1), (2) et (3)

Une fois qu'une plainte a été portée devant lui, le Conseil de la magistrature est chargé de la conduire de l'affaire

par. 51.3 (4)

SOUS-COMITÉ DES PLAINTES

COMPOSITION

La plainte reçue par le Conseil de la magistrature est examinée par un sous-comité des plaintes du Conseil, qui se compose d'un juge autre que le juge en chef et d'un membre du Conseil qui n'est ni juge ni avocat (si la plainte est portée contre un protonotaire, les procédures s'appliquent à lui de la même manière qu'à un juge). Les membres admissibles du Conseil de la magistrature siègent au sous-comité des plaintes par rotation.

par. 51.4 (1) et (2)

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GUIDE DE PROCÉDURES DU CMO

ANNEXE « B »

dans la décision d'un juge ni de modifier sa décision dans un dossier. Seule une cour d'appel peut modifier la décision d'un juge.

Depôt d'une plainte

Si vous avez une plainte d'inconduite à présenter

contre un juge provincial ou un protonotaire, vous devez formuler votre plainte par lettre signée. La plainte doit inclure la date, l'heure et le lieu de l'audience et autant de détails que possibles qui vous portent à croire qu'il y a eu inconduite. Si votre plainte porte sur un incident qui s'est produit à l'extérieur de la salle d'audience, veuillez fournir tous les renseignements pertinents qui vous portent à croire qu'il y a eu inconduite de la part du juge.

Comment les plaintes sont elles instruites?

Lorsque le Conseil de la magistrature de l'Ontario reçoit votre lettre de plainte, il vous répondra par écrit pour en accuser réception. Un sous-comité, composé d'un juge et d'un membre du public, mènera une enquête sur votre plainte et fera une recommandation à un comité d'examen composé d'un plus grand nombre de membres. Ce comité d'examen, qui comprend deux juges, un avocat et un autre membre du public, révisera soigneusement votre plainte avant de rendre sa décision.

Décision du Conseil

L'inconduite judiciaire est une affaire des plus sérieuses. Elle peut entraîner des sanctions allant d'un avertissement donné au juge jusqu'à la recommandation de sa destitution. Si le Conseil de la magistrature de l'Ontario décide qu'un juge est l'auteur d'une inconduite, une audience publique pourrait être tenue et le Conseil pourra déterminer quelles sanctions disciplinaires seraient appropriées.

Renseignements supplémentaires

Si vous avez besoin de renseignements ou d'assistance supplémentaires, veuillez composer le (416) 327-5672 dans la région métropolitaine de Toronto. À l'extérieur de la région métropolitaine de Toronto, vous pouvez téléphoner sans frais le 1-800-806-5186. Les utilisateurs de télécopieur peuvent composer sans frais le 1-800-695-1118.

Les plaintes par écrit doivent être envoyées par la poste ou par télécopieur à l'adresse suivante:

Conseil de la magistrature de l'Ontario
C.P. 914
Succursale Adelaide
31, rue Adelaide est
Toronto (Ontario) M5C 2K3
Télécopieur (416) 327-2339

Rappel...

Le Conseil de la magistrature de l'Ontario enquête seulement sur les plaintes portant sur la conduite de juges provinciaux ou de protonotaires. Si vous n'êtes pas satisfait de la décision d'un juge en cour, veuillez consulter votre avocat pour déterminer quelles sont vos options en matière d'appel. Toute plainte portant sur la conduite d'un juge nommé par le gouvernement fédéral doit être faite au Conseil canadien de la magistrature à Ottawa.



LE CONSEIL DE LA MAGISTRATURE DE L'ONTARIO AVEZ-VOUS UNE PLAINTE?

L'information contenue dans cette brochure porte sur les plaintes d'inconduite
formées contre les juges provinciaux ou les protonotaires.

Les juges provinciaux en Ontario – Qui sont-ils?

En Ontario, la plupart des causes en droit pénal et en droit de la famille sont entendues par l'un des nombreux juges nommés par le gouvernement provincial pour assurer que justice soit rendue. Les juges provinciaux, qui entendent des milliers de causes par année, ont exercé le droit pendant au moins dix ans avant d'être nommés à la magistrature.

Le système de justice de l'Ontario:

En Ontario, comme dans le reste du Canada, le système de justice est fondé sur la procédure contradictoire. Autrement dit, lorsqu'il y a un différend, les deux parties ont la possibilité de présenter leur version des faits et leurs éléments de preuve à un juge dans une salle d'audience. Nos juges ont le devoir difficile mais essentiel de décider de l'issue d'une cause en se fondant sur les témoignages qu'ils entendent en cour et leur connaissance du droit.

Pour assurer le bon fonctionnement de ce type de système de justice, les juges **doivent** être libres de prendre leurs décisions pour les bonnes raisons, sans se soucier des conséquences de mécontenter l'une des parties, que ce soit le gouvernement, une société, un(e) citoyen(ne) ou un groupe de citoyens.

La décision d'un juge est-elle finale?

La décision du juge peut entraîner de nombreuses conséquences graves. Celles-ci peuvent aller d'une amende à la probation ou une peine de prison ou, dans les causes en droit de la famille, au placement des enfants avec l'un ou l'autre des parents. Souvent, la décision risque fort de

Rôle du Conseil de la magistrature de l'Ontario

En Ontario, nous nous attendons à des normes élevées dans la façon dont justice est rendue et dans la **conduite** des juges qui ont la responsabilité de rendre les décisions. Si vous voulez vous plaindre de l'inconduite d'un **juge provincial** ou **protonotaire**, vous pouvez déposer une plainte officielle auprès du **Conseil de la magistrature de l'Ontario**. Heureusement, l'inconduite d'un juge est un événement rare. Des exemples d'inconduite d'un juge peuvent inclure un parti pris contre une personne en raison de sa race ou de son sexe, un conflit d'intérêt avec l'une des parties ou le manquement au devoir.

decevoir l'une ou l'autre des parties. Si l'une des parties au litige pense qu'un juge a rendu la mauvaise décision, elle peut demander une révision de la décision ou **interjeter appel** de la décision du juge devant une cour supérieure. Cette cour supérieure est mieux connue sous le nom de cour d'appel. Si la cour d'appel convient qu'une erreur a été commise, la décision initiale peut être modifiée ou un nouveau procès peut être ordonné.

Le Conseil de la magistrature de l'Ontario est un organisme qui a été établi par la province de l'Ontario en vertu de la *Loi sur les tribunaux judiciaires*. Le Conseil de la magistrature remplit plusieurs fonctions mais son rôle principal est d'enquêter sur les plaintes d'**inconduite** formées contre des juges provinciaux. Le Conseil est composé de juges, d'avocats et de membres du public. Le Conseil n'a pas le pouvoir d'intervenir

LE CONSEIL DE LA MAGISTRATURE
DE L'ONTARIO – AVEZ-VOUS UNE PLAINTES?

ANNEXE «A»

CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

RAPPORT ANNUEL 2004 – 2005

ANNEXES

ANNEXE « A »	Conseil de la Magistrature de l'Ontario – Avez-vous une plainte?
ANNEXE « B »	Guide de procédures du CMO
ANNEXE « C »	Plan de formation continue
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ANNEXE « F »	Conseil de la Magistrature de l'Ontario – Motifs de la décision

L'Ontario et transmises au sous-comité des plaintes aux fins d'enquête. Ces nouvelles plaintes ont été divulguées à l'avocat du juge. Après avoir terminé son enquête, le sous-comité des plaintes a recommandé que les deux nouvelles plaintes soient instruites au cours de l'audience, en même temps que les six autres plaintes, et cette recommandation a été acceptée par le comité d'examen.

Le juge a été acquitté des accusations d'agressions sexuelles le 6 mai 2004. La requête déposée par l'avocat du juge réclamant la tenue à huis clos de l'audience de la Cour de justice de l'Ontario, qui a été entendue par le comité d'audience le 15 juin 2004, a été rejetée. L'audience a eu lieu à Toronto du 3 au 13 août 2004 inclusivement. Le 24 septembre 2004, le comité d'audience a rendu sa décision et conclu que le juge avait commis une erreur. Il a affiché ses motifs du jugement sur le site Web de la Cour de justice de l'Ontario le 27 septembre. Une copie du texte intégral des « motifs du jugement » dans cette affaire se trouve à l'annexe « F ». La date du 16 novembre 2004 a été établie pour la poursuite de l'audience sur la question de la sanction appropriée et pour traiter toute demande de dédommagements pour services juridiques déposée par l'avocat du juge. Le 15 novembre, le Conseil de la magistrature de l'Ontario a été informé par l'avocat du juge que ce dernier avait démissionné de sa fonction judiciaire et, pour cette raison, ne relevait plus de la compétence du Conseil de la magistrature de l'Ontario.



DOSSIER N° 08-031/02

Le 6 décembre 2002, la Cour de justice de l'Ontario a reçu une allégation d'inconduite contre un juge transmise par les services d'administration des tribunaux du ministère du Procureur général. Le ministère faisait savoir que l'une de ses employées, une greffière de la cour, soutenait qu'un juge l'avait touchée de façon inappropriée. La plainte a été confiée à un sous-comité des plaintes dont les membres ont immédiatement retenu les services d'un enquêteur pour mener des entrevues avec la greffière de la cour et d'autres employés de l'administration des tribunaux. Les membres du sous-comité des plaintes ont également demandé au juge de répondre à la plainte le 10 décembre 2002. Le 13 décembre 2002, les membres du sous-comité des plaintes ont recommandé à un juge principal régional (JPR) de suspendre le juge visé par la plainte, avec rémunération (comme le prévoit la Loi sur les tribunaux judiciaires), jusqu'à ce qu'une décision définitive concernant la plainte soit prise ou que le sous-comité des plaintes ou la Cour de justice de l'Ontario aient été informés des faits ou des circonstances qui pourraient modifier sa recommandation. Après avoir discuté avec le juge visé, le JPR a souscrit à la recommandation du sous-comité des plaintes et le juge visé a été suspendu le 20 décembre 2002. D'autres plaintes de conduite inappropriée déposées par cinq autres membres du personnel du tribunal où le juge visé présidait ont été portées à l'attention du Conseil et ont été versées au dossier d'enquête. Dans une lettre datée du 17 janvier 2003, on a demandé au juge de répondre aux autres plaintes, et on a avisé le Conseil de la magistrature qu'une enquête policière avait été amorcée. L'avocat du juge a demandé une prolongation de délai pour fournir une réponse aux plaintes, et celle-ci lui a été

accordée. Son délai a été prolongé jusqu'au 3 mars 2003. Une autre demande de prolongation a été rejetée. Dans sa lettre accusant réception du rejet de la demande de prolongation, l'avocat du juge a indiqué que le juge avait nié toute suggestion ou allégation d'inconduite ou de contact inapproprié avec le personnel du tribunal. Le sous-comité des plaintes a déclaré au comité d'examen le 11 mars 2003 qu'il recommandait que les six plaintes soient entendues, et les membres du comité d'examen ont souscrit à cette recommandation.

Un comité d'audience a été créé et un avis d'audience, daté du 11 avril 2003, a été préparé et signifié à l'avocat du juge visé. Le 28 mai, la Police provinciale de l'Ontario a émis un communiqué de presse informant qu'elle avait porté des accusations d'agressions sexuelles contre le juge visé en regard au premier incident porté à l'attention du conseil et concernant la greffière du tribunal. Le 27 août 2003, le comité d'audience de la Cour de justice de l'Ontario s'est réuni afin de fixer une date d'audience et d'examiner les motions préliminaires. L'avocat du juge visé a déposé une demande d'ajournement de l'audience jusqu'à ce que les accusations criminelles soient tranchées. Il a également demandé qu'il soit ordonné que l'audience de la Cour de justice de l'Ontario, quelle que soit la date où elle aurait lieu, se tienne à huis clos. L'affaire a été ajournée jusqu'au 15 janvier 2004 afin que soit mise à jour la situation des accusations criminelles et que soit fixée une date pour l'audience de la Cour de justice de l'Ontario. Le 15 janvier 2004, la date de détermination des questions préliminaires a été fixée au 15 juin 2004 et il a été établi que l'audience en soi se déroulerait du 3 au 13 août 2004. À la suite de l'établissement des dates d'audience, deux autres plaintes concernant la présumée conduite inappropriée du juge ont été déposées devant la Cour de justice de

11. Audiences

DOSSIER N° 08-024/02

La plaignante était accusée dans une affaire criminelle. Elle s'est plainte de la conduite de la juge et de son interrogatoire lors de l'inscription du plaidoyer de culpabilité devant elle. La plaignante remet en outre en question la conduite de la même juge qui a parlé, à l'extérieur du tribunal, avec une personne en relation avec la famille de l'accusée et, selon les sources de cette dernière, a discuté avec cette personne de l'affaire de la plaignante qui était à ce moment instruite par elle. La plaignante a demandé lors la comparution qui a suivi que la juge en question se récuse, ce qu'elle a fait. La plaignante a par ailleurs indiqué que la juge a tenté de parler en privé avec son avocat, ce qui n'a fait que l'exaspérer et l'inquiéter davantage.

Le sous-comité des plaintes a examiné la plainte et a retenu les services d'un enquêteur. Après examen des rapports d'enquête, le sous-comité des plaintes a demandé une réponse de la juge concernant la plainte. Dans sa réponse, la juge a reconnu le caractère inapproprié de sa conduite et s'est excusée de ses actions. Le sous-comité des plaintes a recommandé que cette affaire soit déferée au juge en chef. Après avoir examiné attentivement la plainte et les faits mis en évidence par l'enquête, le comité d'examen a décidé d'ordonner une audience. La majorité des membres du comité d'examen ont voté en faveur de l'ordonnance d'une audience. Un avis d'audience a été émis et une audience publique a eu lieu le 29 juin 2004. Comme cette affaire ne répondait pas au critère d'audience à huis clos, l'audience s'est déroulée en public.

Un exposé conjoint des faits, qui contenait une observation conjointe eu égard à la nature de la conduite reconnue par la juge et au degré de sa gravité, a été déposé. La plaignante a souscrit à l'observation conjointe et compris qu'elle pourrait faire l'objet d'une décision plus grave si elle récidivait.

Le comité d'audience croyait qu'il était dans le meilleur intérêt de l'administration de la justice que la juge continue de siéger comme elle le faisait avant que la plainte soit déposée. Il n'y a eu aucune recommandation visant le versement d'indemnités conformément au paragraphe 51.7 (4) de la Loi sur les tribunaux judiciaires.

Une copie du texte intégral des « motifs du jugement » de cette affaire se trouve à l'annexe « F ».

afin qu'il enquête sur les allégations du plaignant. Dans son accusé de réception envoyé au plaignant, le Conseil a indiqué clairement les limites de sa compétence et demandé des renseignements supplémentaires qui ne figuraient pas dans la lettre de plainte originale. Le plaignant a répondu en soumettant les renseignements demandés. L'examen des documents a montré de façon évidente qu'il s'agissait d'une affaire en cours. Après que les Services aux tribunaux eurent confirmé que l'affaire était actuellement devant la Cour de justice de l'Ontario, et tout particulièrement devant le juge visé, on a demandé au sous-comité des plaintes de décider s'il devait ou non poursuivre son enquête à ce moment-là. Le sous-comité des plaintes était d'avis qu'il était inapproprié pour le Conseil de la magistrature d'enquêter sur les préoccupations du plaignant alors que l'affaire était entendue devant les tribunaux. Le plaignant a été informé de l'opinion du sous-comité des plaintes et son dossier de plainte lui a été retourné. Le dossier de plainte dans cette affaire a été clos, en attendant que le plaignant informe le Conseil de la conclusion de l'affaire et de son intention de réactiver sa plainte.

parce que la sentence qu'il a imposée n'a pas été enregistrée correctement. Le sous-comité des plaintes a souligné que l'erreur, qui était manifestement une grande source d'inquiétude pour la plaignante, avait été corrigée. Le sous-comité des plaintes est d'avis que le juge Y n'avait pas commis d'inconduite parce que l'erreur commise dans les documents antérieurs et les rapports de police connexes étaient sans rapport avec l'objet de l'instance devant être entendue par lui. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 10-026/05

Le plaignant était un père biologique partie à une affaire de la Cour de la famille qui l'opposait à son ex-femme concernant la garde de son fils et le droit de visiter à son égard. Le plaignant a indiqué qu'il avait entendu par hasard une conversation non enregistrée dans laquelle il était allégué que le juge avait donné des directives à l'avocat représentant le fils pour qu'il lui dise que « son père ne l'aimait plus et que son père ne voulait plus le voir ». Le plaignant a allégué que ces commentaires « cherchaient clairement à porter erroneusement mon fils à croire que son père avait abandonné la bataille judiciaire visant à le libérer ». En outre, le plaignant était d'avis que le juge entretenait une « relation spéciale » avec l'organisme Jewish Child and Family Services et que, pour cette raison, il avait tendance à favoriser leur position dans ses décisions.

Le plaignant a demandé au Conseil de la magistrature d'examiner sa plainte et d'interdire au juge qui fait l'objet de sa plainte d'intervenir de nouveau dans son affaire. Un dossier de plainte a été ouvert et confié à un sous-comité des plaintes

plaignant tant que celui-ci serait un fugitif aux yeux de la loi et que son affaire devant le juge en question n'aurait pas été menée à terme, ce dont il a informé le plaignant. Le sous-comité a également fermé le dossier dans cette affaire et fait savoir au plaignant que sa plainte ne pourrait être examinée que lorsqu'il aura indiqué que la sentence est déterminée et qu'il n'y a aucune affaire en suspens devant le juge visé.

DOSSIER N° 10-023/04

La plaignante a plaidé coupable d'un « méfait » le 31 janvier 2001 devant un certain juge (juge X). Elle a reçu une absolution sous condition assortie de 12 mois de probation. La plaignante a signalé que les documents du prononcé de la sentence avaient été incorrectement consignés et qu'ils indiquaient qu'elle avait reçu une condamnation avec sursis plutôt qu'une absolution. La plaignante a fait savoir qu'elle avait pris les mesures nécessaires pour que cette erreur soit corrigée, mais qu'elle se sentait victimisée par l'appareil judiciaire et la police en particulier, depuis sa condamnation. Elle a déposé une plainte contre le juge Y qui était le juge président d'une instance « fixée » ultérieurement parce qu'il ne lui avait pas permis d'informer la cour de l'erreur commise dans les documents antérieurs. En règle générale, elle pense que les juges ont fait la sourde oreille à ses préoccupations concernant l'appareil judiciaire.

Le sous-comité des plaintes a examiné les pièces accompagnant la plainte et recommandé au comité d'examen que la plainte soit rejetée. De l'avis du sous-comité des plaintes, le juge X, qui a déterminé la peine de la plaignante en janvier 2001, n'a pas fait preuve d'inconduite simplement

dans une poursuite au criminel d'avoir protégé des menaces de mort et de s'être livré à des voies de fait. Le plaignant a indiqué que son avocat était arrivé en retard au procès et que le juge avait insisté pour procéder sans lui. Le plaignant a soutenu en outre que lorsque son avocat s'est présenté, le juge « était très en colère contre lui et n'écoutait pas ce que lui ou ses témoins avaient à dire ». Le plaignant a été trouvé coupable aux deux chefs d'accusation portés contre lui, et il a allégué qu'il n'avait pas eu droit à un procès équitable. Il a également indiqué qu'il avait une lettre de son avocat déclarant que ce dernier « témoignerait qu'il n'avait pas eu droit à un procès équitable ». On lui a demandé de fournir au Conseil des copies des transcriptions de son procès et de la lettre de son avocat et un sous-comité des plaintes a été désigné pour enquêter sur ses allégations. Dans une lettre présentée avec les transcriptions et la copie de son avis d'appel, le plaignant a en outre allégué que « certaines choses dites au cours de l'audience n'avaient pas été transcrites ». Le sous-comité des plaintes a demandé une copie de la bande sonore du procès afin de la comparer aux transcriptions et a écrit à l'adresse électronique (courriel) fournie par le plaignant pour demander à celui-ci de confirmer que la détermination de la peine avait été conclue et l'informer de l'état des appels devant la cour. Dans sa réponse, le plaignant a informé le sous-comité que bien que le procès ait eu lieu en 2001, il n'avait pas comparu pour la sentence, et il est devenu évident que le plaignant était toujours « en liberté » depuis. Le plaignant a indiqué qu'il ne s'était pas présenté devant la cour pour la sentence « pour la simple raison que je ne permettrais pas à un tyran de prononcer une sentence contre moi » Lorsqu'il a reçu ces renseignements, le sous-comité des plaintes était d'avis qu'il ne pouvait pas traiter l'affaire du

Le plaignant a rédigé une lettre mentionnant qu'il y a « un certain temps », il avait été accusé

DOSSIER N° 10-022/04

avisée de l'instance ou que lui soit donnée la possibilité de présenter une réponse aux demandes. Outre les allégations d'inconduite ou de mauvais traitements portées contre la société d'aide à l'enfance et le Bureau de l'avocat des enfants, la plaignante a soutenu que le juge avait été partial et « motivé par des facteurs d'ordre politique ». Au cours de l'instance qui a donné lieu à la plainte présentée devant le Conseil de la magistrature, la plaignante a indiqué avoir quitté la cour alors qu'elle siégeait encore et a allégué que le juge avait appelé des agents de sécurité. Le sous-comité des plaintes a examiné les documents de la plainte et étudié la transcription de l'instance. Le sous-comité des plaintes a recommandé au comité d'examen de rejeter la plainte parce que la transcription ne corrobore pas les allégations selon lesquelles le juge aurait été injuste ou « motivé par des facteurs d'ordre politique ». Il a en outre indiqué que la transcription ne révélait pas que le juge avait appelé des agents de sécurité. Selon le sous-comité des plaintes, le juge a fait preuve d'une partialité et d'une patience extrêmes à l'égard de la plaignante en lui permettant de répondre à la demande présentée devant le tribunal et d'exprimer ses préoccupations. Le sous-comité des plaintes était d'avis que le juge a rendu son ordonnance en tenant compte des preuves contenues dans le dossier ainsi que de toutes les observations de l'avocat de l'enfant, qui soulignaient les intentions et les souhaits de l'enfant. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

Le sous-comité des plaintes a examiné les documents fournis au Conseil de la magistrature par le sous-comité des plaintes et il a recommandé au juge de la décision du juge devant la cour de rejeter l'appel de la décision du juge devant la cour.

DOSSIER N° 10-017/04

Le plaignant a écrit au Conseil de la magistrature en août 2004 pour l'informer qu'il était incarcéré depuis janvier 2004 et attendait toujours son procès. Le plaignant a indiqué qu'il voulait déposer une plainte « contre le système judiciaire parce qu'il ne traitait pas sa cause dans des délais raisonnables ».

Les membres du sous-comité des plaintes chargés de l'enquête étaient d'avis que la plainte devrait être rejetée parce que la lettre du plaignant ne contenait aucune allégation d'inconduite judiciaire et qu'il n'incombe pas à l'appareil judiciaire de faire comparaitre des personnes accusées devant la cour. Le sous-comité des plaintes a également souligné que le plaignant était représenté par un avocat et qu'il aurait dû lui poser ses questions concernant la durée de son incarcération. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER NO 10-018/04

L'ex-femme du plaignant a déposé une demande de pension alimentaire auprès de la Cour de la famille. Le plaignant, qui était l'intimé dans la demande, s'est plaint que le juge qui a entendu l'affaire avait agi de façon inappropriée tant sur le plan des procédures que du fond.

Le sous-comité des plaintes a examiné les documents fournis au Conseil de la magistrature par

le plaignant, puis il a conclu qu'il n'existe pas de preuve d'inconduite judiciaire de la part du juge qui a entendu la requête et il a recommandé au comité d'examen de rejeter la plainte. Le sous-comité des plaintes a expliqué que si l'intimé n'avait pas comparu à l'audience de la demande de son ex-femme, le juge aurait pu rendre une ordonnance conditionnelle concernant la pension alimentaire et déferer l'affaire devant un tribunal de la région où habite le plaignant pour une audience de confirmation. Puisque le plaignant a choisi de comparaitre devant le tribunal, qui a entendu la demande, le juge président était par conséquent, habilité à rendre une ordonnance fondée sur les preuves qui lui avaient été présentées. Le sous-comité des plaintes a en outre indiqué que puisque le plaignant n'avait pas déposé d'éléments de preuve à l'audience, comme l'exigent les règles du droit de la famille, il n'était pas autorisé à participer à l'audience et la Cour pouvait procéder par « défaut » ou sans opposition. Le sous-comité des plaintes a par ailleurs indiqué qu'advenant qu'il y ait des irrégularités de procédure ou de fond (et qu'il ne prenait pas une telle conclusion), le recours du plaignant repasserait dans un appel devant le tribunal compétent. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 10-019/04

La plaignante est l'intimée dans une instance en vertu de la Loi sur les services à l'enfance et à la famille dans laquelle la société d'aide à l'enfance cherche à obtenir la prolongation d'une imposition contre la mère intimée, au nom de l'enfant qui fait l'objet de l'instance. La plaignante a indiqué que des injonctions antérieures avaient été établies contre elle, souvent sans qu'elle soit

DOSSIER NO 10-015/04

Le plaignant a comparu devant la Cour de la famille pour déterminer le montant de la pension alimentaire qu'il devait verser à son ex-femme pour les frais de garde de sa fille. Le plaignant a allégué que la juge responsable de la gestion de l'instance qui a présidé l'instance n'était pas impartiale, n'avait pas lu les renseignements sur la cause, avait refusé de lui donner la parole, l'avait ridiculisé tout au long de l'audience et avait fondé sa décision sur des préjugés.

Le sous-comité des plaintes chargé de l'enquête a examiné la lettre de plainte et a également demandé et étudié une transcription de l'audience. Les membres du sous-comité des plaintes ont recommandé au comité d'examen que la plainte soit rejetée parce que, à leur avis, il n'existe pas de preuve d'inconduite judiciaire. Ils ont informé les membres du comité d'examen qu'il y avait deux points en litige devant la juge responsable de la gestion de l'instance le jour en question : le revenu du plaignant et le montant de sa part proportionnelle des frais de garde. Le sous-comité des plaintes a déclaré que la juge responsable de la gestion de l'instance avait agi de manière proactive pour régler ces points et que le premier point, concernant le revenu du plaignant, avait été résolu en faveur de celui-ci. Les membres du sous-comité des plaintes ont indiqué que la question des frais de garde portait sur la somme de six dollars par jour et que le plaignant n'avait pas été en mesure de produire les preuves demandées par la Cour pour étayer sa position. Les membres du sous-comité des plaintes ont fait savoir au comité d'examen que, selon la transcription, la juge responsable de la gestion de l'instance avait offert au plaignant toutes les occasions de s'exprimer, qu'elle était très polie, et

DOSSIER NO 10-016/04

qu'elle n'avait pas, à leur avis, fait preuve de partialité. Ils ont indiqué que l'affaire dont elle était instruite avait finalement été résolue avec le consentement des deux parties. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

La plaignante a écrit au Conseil de la magistrature pour se plaindre des tribunaux de la famille en général et de la décision d'un juge de la famille en particulier. La sœur de la plaignante était décédée en laissant deux filles qui faisaient l'objet d'audiences de garde prolongées devant la Cour de la famille. La garde des nièces de la plaignante a finalement été accordée à leur grand-père maternel. La plaignante a élevé une objection contre ce résultat et contre l'« ingérence » des travailleurs sociaux de l'hôpital où les filles ont été traitées. La plaignante a allégué « qu'aucun juge sensé n'accorderait la garde à un grand-père âgé de 71 ans qui n'a jamais pris soin de ses propres enfants » et que le juge « avait manqué à son devoir de rendre la justice fondamentalement ». La plaignante a demandé au Conseil de la magistrature d'« examiner » la décision du juge.

Le sous-comité des plaintes a examiné la lettre de la plaignante et les documents qu'elle a fournis à l'appui de sa plainte. Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce qu'il n'existe pas de preuve d'inconduite judiciaire dans la façon dont le juge a exercé son pouvoir discrétionnaire pour rendre ses décisions dans l'affaire, soit d'accorder la garde à une personne autre que la plaignante. Les membres du sous-comité des plaintes étaient d'avis que le recours approprié dans ce contexte était d'inter-

en vigueur au moment où les accusations avaient été portées parce que la copie du règlement qui avait été présentée au juge de paix n'était pas signée. Par conséquent, il n'a pas autorisé l'appel de la Couronne et n'a pas ordonné que se tiennent un nouveau procès.

Le sous-comité des plaintes a en outre déclaré qu'après avoir rendu sa décision, le juge d'appel avait bien déclaré que « ... l'entrave à leur capacité d'aller derrière le bar constitue une obstruction. À titre de conclusion gratuite, le fait d'avoir retardé leur entrée dans un lieu public parce qu'il fallait une clé est également une obstruction. Mais comme aucun règlement municipal n'a été présenté devant le juge d'appel, personne ne peut être déclaré coupable d'infraction au règlement municipal. » Le conseiller municipal, qui a écrit au nom de son électeur (le propriétaire de bar) s'est plaint que le juge d'appel avait déterminé d'avance « l'issue d'un procès sans entendre les preuves sur l'affaire » (c.-à-d. les conclusions selon lesquelles le fait de fermer à clé les portes du bar constituait une obstruction).

Le sous-comité des plaintes chargé de l'enquête a recommandé au comité d'examen de rejeter la plainte parce que, bien que le juge avait manifestement formulé des commentaires gratuits (et qu'il a effectivement dit, dans le registre, qu'ils étaient gratuits), ils n'étaient pas inappropriés dans l'affaire. Les membres du sous-comité des plaintes ont en outre indiqué que le juge visé n'a pas renvoyé l'affaire pour un nouveau procès ni n'a rendu de décision sur la question d'obstruction et qu'à leur avis, il n'existe aucune preuve d'inconduite judiciaire. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

l'usage du tabac, un conseiller municipal s'est plaint d'un commentaire formulé par le juge qui a entendu un appel dans l'affaire. Le commentaire du juge a également été cité dans un article d'un journal local et le plaignant a fourni une copie de cet article avec sa lettre de plainte.

Le sous-comité des plaintes chargé de l'enquête a demandé la transcription de l'appel et fait le compte-rendu suivant au comité d'examen : un propriétaire de bar a été accusé, en vertu d'un règlement municipal sur l'usage du tabac, d'obstruction à un agent d'exécution des règlements municipaux. Apparemment, le personnel du bar aurait refusé à l'agent d'exécution des règlements municipaux l'accès à la zone qui se trouve derrière le bar, et le propriétaire du bar aurait demandé à son personnel de fermer à clé les portes du bar pendant les heures d'ouverture. Des clients habitués disposaient des clés pour accéder au bar, mais les agents d'exécution des règlements municipaux ne pouvaient y obtenir l'accès. Le propriétaire du bar a été accusé d'obstruction en vertu du règlement municipal sur l'usage du tabac, et un procès s'est tenu devant un juge de paix. Une copie signée du règlement municipal n'avait pas été déposée devant la Cour au moment du procès, et le propriétaire du bar a interjeté appel de la peine aux motifs que le juge de paix n'avait pas compétence pour entendre l'affaire. Le procureur provincial qui a comparu à l'instruction de l'appel a informé le juge chargé d'entendre l'audience qu'il y avait trois autres affaires en attente d'un procès qui présentaient des faits similaires et lui a demandé le renvoi de l'affaire pour un nouveau procès. Le juge d'appel a déclaré qu'il ne pouvait renvoyer l'affaire parce qu'il n'y avait pas de preuve devant la cour de première instance de l'existence d'un règlement

Le sous-comité des plaintes chargé de l'enquête a examiné la lettre du plaignant et demandé une copie de la transcription du procès du plaignant et de l'audience de détermination de la peine. Après avoir étudié les documents pertinents, les membres du sous-comité des plaintes ont recommandé au comité d'examen de rejeter la plainte, car à leur avis, il n'existe aucune preuve d'inconduite judiciaire de la part de la juge qui présidait. Le sous-comité des plaintes a souligné que la juge du procès avait tiré des conclusions de crédibilité comme il se doit et qu'il semblerait que le plaignant était tout simplement mécontent que la juge du procès ne l'ait pas cru et l'ait indiqué dans son jugement. Le sous-comité des plaintes a également souligné qu'il n'y avait aucune allusion au fait que les témoins étaient connus ou que leur restaurant se situait dans les environs et qu'il n'existait aucune preuve d'un conflit d'intérêts. Les membres du sous-comité des plaintes ont en outre indiqué que le plaig-nant était représenté par un avocat tout au long du procès et que le recours approprié, s'il était insatisfait de la condamnation ou de la sentence, était d'en appeler des résultats. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 10-011/04

Le plaignant a comparu devant la Cour de la famille dans le cadre d'une audience visant à déterminer le montant de la pension alimentaire. Le plaignant a allégué que le juge en question « a rendu des ordonnances selon ses souhaits... qu'il n'a pas donné la possibilité au parent qui n'a pas la garde de présenter ses arguments ». Le plaig-nant a soutenu en outre que le juge avait rendu une ordonnance sur la pension alimentaire fondée sur des renseignements erronés concernant son

DOSSIER N° 10-013/04

revenu, lesdits renseignements ayant été fournis par son ex-femme, qui est le parent qui a la garde. Le sous-comité des plaintes chargé de l'enquête a examiné la lettre de plainte et recommandé au comité d'examen de rejeter la plainte au motif qu'il était, selon lui, apparent que le plaignant était insatisfait du jugement de la cour et que sa plainte ou les allégations d'inconduite judiciaire étaient sans fondement, hormis le fait qu'il n'était pas d'accord avec la décision du juge. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 10-014/04

Près de cinquante personnes ont rédigé des lettres ou fait circuler des pétitions qu'elles ont fait parvenir au Conseil de la magistrature de l'Ontario pour exprimer leur mécontentement concernant la sentence imposée par un juge dans une affaire délicate de violence envers un enfant. Les membres du sous-comité des plaintes chargé de l'enquête ont recommandé de rejeter les plaintes parce qu'elles portaient toutes uniquement sur la sentence du juge et que le Conseil de la magistrature n'est pas habilité à s'interposer dans la décision qu'un juge rend. Les membres du sous-comité des plaintes ont en outre informé le comité d'examen que la Couronne en avait appelé de la sentence du juge et que c'était le seul moyen de modifier la décision si la cour d'appel conclut que le juge du procès a commis des erreurs de droit. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

Au nom d'un électeur propriétaire d'un bar qui a été accusé en vertu d'un règlement municipal sur

mariage du plaignant et de la délinquante. Lavocat de la défense a invoqué ces renseignements pour expliquer, en partie, la conduite criminelle de la délinquante. De l'avis du sous-comité des plaintes, le juge président s'est fié à ce rapport et aux renseignements qu'il contient sur l'ancien mariage de la délinquante, d'une façon appropriée. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 10-009/04

La plaignante a été accusée sous un chef de « fraude inférieure à 5 000 \$ » et un chef de « possession de pièces de monnaie à des fins frauduleuses » en vertu du Code criminel pour avoir utilisé des monnaies étrangères au lieu des jetons de transport en commun/métro appropriés. La plaignante a allégué que le juge président l'affaire a ajourné quatre fois l'audience pour essayer de gonfler ses frais judiciaires. La plaignante a soutenu en outre que le juge avait formulé des commentaires qui étaient injustifiés, non professionnels et à caractère raciste qui révélèrent son préjugé allégué dans l'affaire. La plaignante a également allégué que le juge s'était mépris sur les preuves et qu'il avait omis de se prononcer sur un voir-dire. La plaignante a par ailleurs allégué que le juge avait formulé des remarques gratuites lorsqu'il a prononcé la sentence contre elle.

Le sous-comité des plaintes a examiné les documents de la plainte et a étudié les transcriptions de toutes les instances que lui avait fournies le plaignant. Le sous-comité des plaintes a recommandé au comité d'examen que la plainte soit rejetée parce que les transcriptions ne fournissent pas de preuve à l'appui de l'allégation voulant que le juge ait ajourné inutilement l'affaire.

visant le rejet de la plainte.

DOSSIER N° 10-010/04

faire. Le sous-comité des plaintes a également déclaré que la transcription ne corroborait pas non plus les allégations de la plaignante selon lesquelles le juge avait formulé des commentaires qui étaient injustifiés, non professionnels ou à caractère raciste ou qui révélaient son « préjugé » dans l'affaire. Selon le sous-comité des plaintes, les interventions du juge au cours des témoignages étaient tout à fait appropriées pour comprendre les preuves. Le sous-comité des plaintes était d'avis que les commentaires du juge après le prononcé de la sentence n'étaient pas inconvenants selon le contexte dans lequel ils avaient été formulés. Le sous-comité des plaintes a souligné qu'un grand nombre des questions figurant dans la lettre de la plaignante adressée au Conseil pouvaient faire l'objet d'un appel, que la plaignante a interjeté. Le sous-comité des plaintes a en outre indiqué que l'appel de la plaignante a été rejeté par la Cour d'appel de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

Le plaignant a été accusé de méfait public et de voies de fait avec une arme et a comparu devant la cour en 1998. Le plaignant a écrit au Conseil de la magistrature de l'Ontario en 2004 pour l'informer que la juge du procès avait abusé de son pouvoir et l'avait calomnié dans les remarques qu'elle avait formulées au moment de prononcer la sentence le concernant. Le plaignant a également allégué que la juge se trouvait dans une situation de conflit d'intérêts au moment du procès, car deux témoins au procès étaient censément les propriétaires et exploitants d'un restaurant situé en face du palais de justice où la juge allait régulièrement manger.

la plainte. Après avoir étudié la plainte et les documents fournis, le sous-comité des plaintes a recommandé au comité d'examen de rejeter la plainte parce que, à son avis, le juge n'a pas commis d'inconduite judiciaire lorsqu'il a rendu ses décisions en égard aux questions de garde et de droit de visite. Par ailleurs, le sous-comité des plaintes a souligné que les allégations de « lien familial » n'étaient pas précises, ne pouvaient être vérifiées en raison de leur manque de précision et semblaient être le fruit d'une réflexion ultérieure sur la plainte de fond qui concerne les décisions sur le droit de visite rendues par le juge au fil des années. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 10-007/04

Lex-femme du plaignant a comparu devant la cour criminelle pour faire face à des accusations de vol commis contre une œuvre de charité pour laquelle elle avait fait du bénévolat. Le plaignant s'est opposé aux commentaires formulés par le juge président lors de la détermination de la peine concernant la vie de « privations et de tourments » qu'avait vécue l'ex-épouse pendant ses 28 ans de mariage avec le plaignant. Le plaignant a écrit au juge principal régional du juge présidant au procès pour élever une objection contre les commentaires formulés à son sujet en cour et lui demander de prendre des mesures de « surveillance » contre le juge du procès. Lorsque le juge principal régional a refusé de répondre à ses préoccupations, le plaignant a écrit au Conseil de la magistrature pour porter plainte contre le juge principal régional.

Le sous-comité des plaintes chargé de l'enquête a examiné les documents fournis par le plaignant

et a recommandé que la plainte contre le juge principal régional soit rejetée parce que sans fondement. Le sous-comité des plaintes a signalé qu'il aurait été inapproprié pour le juge principal régional de tenter d'exercer une surveillance, une influence ou un contrôle sur le juge présidant le procès de la manière suggérée par le plaignant et que la demande du plaignant à cet effet était inappropriée en soi. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 10-008/04

Lex-femme du plaignant a comparu devant la cour criminelle pour faire face à des accusations de vol commis contre une œuvre de charité pour laquelle elle faisait du bénévolat. Le plaignant s'est opposé aux commentaires formulés par le juge président lors de la détermination de la peine concernant la vie de « privations et de tourments » que l'ex-épouse avait vécue pendant ses 28 ans de mariage avec le plaignant.

Le sous-comité des plaintes chargé de l'enquête a exécuté la plainte et les documents à l'appui fournis par le plaignant et a étudié une copie de la transcription de la procédure relative à la détermination de la sentence. Les membres du sous-comité des plaintes ont signalé au comité d'examen que, à leur avis, la plainte devrait être rejetée car il n'existe aucune preuve d'inconduite judiciaire de la part du juge président. Le sous-comité des plaintes a informé le comité d'examen de ce qui suit : le juge avait reçu un rapport présentiel aux fins de détermination de la peine. Ce rapport comprend des renseignements recueillis auprès de nombreuses tierces sources, autres que le plaignant. Il renferme des renseignements sur les conditions de l'ancien

Après un examen approfondi de la transcription, le sous-comité des plaintes était de l'avis que la plainte n'était pas fondée parce que la transcription confirmait que le juge du procès n'avait pas fait les commentaires allégués. Le sous-comité des plaintes a souligné que le juge avait fait preuve de patience et de considération à l'égard de l'accusé lors du procès, lui permettant d'interroger les témoins tout en restant assis, en raison d'un handicap. Il a également été souligné que le juge avait été obligeant en expliquant la pertinence des questions et les procédures du procès. La transcription a confirmé que le juge avait demandé au plaignant s'il désirait présenter des preuves et, ce faisant, lui a expliqué la procédure de production de preuves devant la Cour. Le sous-comité des plaintes a souligné que le plaignant a refusé de présenter des preuves en son propre nom. Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce que sans fondement. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 10-005/04

Le plaignant était le père biologique et le demandeur d'une requête déposée auprès de la Cour de la famille afin de faire modifier une ordonnance de droit de visite qui s'appliquait à ses trois enfants. Le plaignant a allégué que le juge a omis de lire les documents qui avaient été déposés devant la Cour et fait fi de ses arguments à l'appui de sa requête visant à faire modifier l'ordonnance de droit de visite. En outre, le plaignant a soutenu que les remarques du juge étaient « désagréables, offensantes, répugnantes, sordides et contraires à l'article 15 de la Charte ».

Le sous-comité des plaintes a examiné les documents de la plainte fournis et a demandé et reçu

DOSSIER N° 10-006/04

La transcription et la bande sonore de l'instance. Le sous-comité des plaintes a recommandé au comité d'examen que la plainte soit rejetée parce qu'il croyait que le juge était au courant des questions dont il était saisi et a démontré qu'il comprenait les observations faites dans l'instance. Le Conseil était d'avis que le juge a donné au plaignant l'occasion de faire part de ses inquiétudes et lui a offert d'autres modalités de droit de visite auxquelles la Cour pourrait souscrire. De l'avis du sous-comité des plaintes, les commentaires du juge n'ont pas été jugés « désagréables, offensants, répugnants, sordides et contraires à l'article 15 de la Charte », tel que l'a prétendu le plaignant. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

Le plaignant était le grand-père d'un enfant faisant l'objet d'un litige sur la garde et le droit de visite qui a été porté devant le même juge en 1998 et en 2001. Le plaignant a formulé de nombreuses oppositions aux diverses décisions prises par le juge concernant les questions de droit de visite, principalement la décision prise en 2001 voulant que les autres membres de la famille, sauf lui, puissent avoir un droit de visite non supervisé. Le plaignant s'est également dit préoccupé par le fait que le juge avait pris ces décisions en raison d'un « lien familial » qu'il pourrait avoir eu avec l'une des parties au litige. Le plaignant a en outre indiqué que s'il avait été au courant de l'existence du Conseil de la magistrature en 2001, il aurait porté plainte plus tôt.

Le sous-comité des plaintes a examiné les documents fournis par le plaignant, notamment les copies des jugements rendus par le juge visé par



visant le rejet de la plainte.

DOSSIER N° 10-003/04

qu'elle avait déjà été mon avocate »,

relative à la détermination de la sen

DOSSIER N° 10-004/04

des plaintes visant le rejet de la plainte.

déjà prononcé avant d'entendre sa défense.

a demandé et étudié la transcription de l'instance.

plus détaillées concernant la formation sur la sécurité des employés que ceux inclus dans l'exposé conjoint des faits. Le sous-comité des plaintes a également souligné que le juge a fait les déclarations de façon incidente et est d'avis que les commentaires se rapportaient aux faits présentés devant lui et à la décision rendue. Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce qu'il était d'avis que les commentaires n'équivalaient pas à une inconnue judiciaire. Selon le sous-comité des plaintes, un appel interjeté par la Couronne était le recours approprié si le juge avait établi certains faits mal fondés en droit ou s'il avait fait une appréciation erronée des faits. Le comité d'examen n'a pas tenu compte de la recommandation du juge figurant dans les plaintes visant le rejet de la plainte et était d'avis que les commentaires du juge devraient être pertinence et inutiles et que le juge devrait être invité à répondre à la plainte, surtout aux commentaires qui figurent dans le post-scriptum.

La réponse du juge a été examinée par le sous-comité des plaintes qui n'a pas modifié sa recommandation de rejeter la plainte parce que la réponse du juge ne lui permettait pas de croire qu'il y avait lieu de modifier son opinion sur la plainte ou la conduite du juge. Après avoir examiné les autres documents qui lui ont été présentés, le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte. Le comité d'examen a admis qu'un exposé conjoint des faits dans une autre instance ne lierait nullement le juge dans cette affaire, et qu'à ce procès, d'autres détails concernant la formation des employés ont été présentés et le juge a statué en se fondant sur les preuves présentées devant lui. En bout de ligne, le comité d'examen a convenu qu'il n'existe pas

de preuve d'inconduite apparente dans la décision du juge, même si certains des commentaires qu'il a formulés dans la conclusion de son jugement n'étaient pas justifiés.

DOSSIER N° 10-002/04

Le plaignant est un demandeur dans une affaire de la Cour des petites créances dans laquelle le conjoint de l'intimée, qui agissait en tant que son mandataire, est un « franc-maçon connu ». Le plaignant a allégué que le mandataire de l'intimée avait utilisé des « signes manuels de franc-maçonnerie » connus pour communiquer avec les juges devant lesquels ils ont comparu et que le plaignant soupçonne d'être également des francs-maçons. Le plaignant a indiqué que le mandataire de l'intimée « a, à quelques reprises, tendu ses bras en tenant les paumes de ses mains vers le haut » et a soutenu qu'il s'agissait là de « gestes d'insistance qu'ils [les francs-maçons] font lorsqu'ils demandent quelque chose à un autre membre de la confrérie ».

Le plaignant a demandé que le Conseil de la magistrature enquête afin de déterminer si les juges font partie de la franc-maçonnerie et de communiquer publiquement ses constatations.

Le sous-comité des plaintes a examiné la plainte et recommandé qu'elle soit rejetée, car il est d'avis qu'il n'existe pas de preuve d'inconduite judiciaire évidente, ni de faits élayant l'allégation d'inconduite. En outre, il était de l'avis du sous-comité des plaintes que le plaignant était insatisfait de la décision des juges devant lesquels il a comparu. Si les juges ont commis des erreurs de droit (et que le Conseil de la magistrature n'a rien conclu à cet égard), ces erreurs peuvent faire l'objet d'un appel et, en l'absence de preuve d'incon-

des mêmes instances. Il s'agit d'une cause traitant de la garde des enfants et des droits de visite à leur égard dans laquelle il y a eu de nombreuses requêtes et des changements d'avocats, ce qui a causé des délais dans l'instruction du litige et la détermination de la date du procès. Les plaignants ont exprimé leur frustration et leur insatisfaction au sujet de tout le processus judiciaire.

Le sous-comité des plaintes a examiné les documents qui lui ont été soumis et a souligné que la présente plainte concernait la même période que celle déjà rejetée par le Conseil de la magistrature. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il était d'avis qu'elle se rapportait aux résultats des requêtes présentées à la Cour plutôt qu'à des questions d'inconduite judiciaire. Le sous-comité des plaintes a par ailleurs souligné que le litige n'est pas encore résolu et que le juge visé pourrait encore intervenir dans cette cause. Le sous-comité des plaintes a expliqué qu'au moment d'examiner la plainte précédente, le Conseil de la magistrature, avait déjà communiqué avec la Childrens Aid Society au sujet des inquiétudes qu'ont exprimées les plaignants concernant de mauvais traitements potentiels infligés aux enfants. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 10-001/04

Le plaignant était un avocat qui représentait une entreprise accusée dans une poursuite grave en vertu de la Loi sur la Santé et la sécurité au travail. Son client a plaidé coupable, un exposé conjoint des faits a été déposé et l'entreprise accusée a été condamnée à une amende après le dépôt d'une proposition conjointe relativement à la sentence. Le plaignant s'est inquiété de la conduite d'un

Le plaignant a allégué que le juge qui présidait avait formulé des commentaires à l'égard de l'entreprise accusée. Plus particulièrement, il aurait notamment dit que « la cause première de l'accident était le défaut de l'entreprise accusée d'établir une culture de prudence au travail ». Le plaignant a également allégué que le juge visé avait déclaré qu'« une partie de l'exposé conjoint des faits présentée à l'autre juge n'était pas exacte ». Le plaignant a déposé un certain nombre d'articles de journaux renfermant ces commentaires à la suite du procès et de l'audience de détermination de la peine. Le plaignant a allégué que le juge était coupable d'inconduite judiciaire parce qu'il avait formulé des constatations négatives à l'égard d'une partie qui n'était pas représentée au procès et n'était pas présente pour témoigner ou répondre à ces constatations négatives.

Le sous-comité des plaintes a examiné les documents accompagnant la plainte, qui comprennent les commentaires du juge du procès ainsi que les articles de journaux concernant le procès et le prononcé de la sentence. Le sous-comité des plaintes a souligné qu'aucun représentant de l'entreprise accusée n'était présent au procès et que le procureur de la Couronne, qui prenait part aux deux affaires, avait présenté au procès des faits

juge autre que celui qui a accepté la proposition conjointe. Le juge visé s'est plaint d'avoir à presider un procès résultant de l'incident même qui a entraîné la poursuite en vertu de la Loi sur la Santé et la sécurité au travail. L'accusé dans le procès était un employé de l'entreprise accusée qui a inscrit un plaidoyer dans la poursuite en vertu de la Loi sur la Santé et la sécurité au travail. C'est le même procureur de la Couronne qui avait été saisi de l'affaire réglée impliquant l'entreprise accusée et du procès de l'employé.

plaintes a demandé une réponse du juge au sujet des lettres de plainte originales. La réponse du juge a été reçue et étudiée.

Après avoir pris en compte les plaintes, le rapport d'enquête et la réponse du juge, le sous-comité des plaintes a recommandé que cette affaire fasse l'objet d'une audience publique. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte. À la suite d'une réunion du CMO lors de laquelle la décision de traiter les plaintes au cours d'une audience a été prise, le plaignant a envoyé deux autres lettres décrivant les allégations de cinq autres personnes œuvrant au sein du système de justice pénal dans son district judiciaire. Le CMO était en train de préparer une enquête au sujet des nouvelles plaintes ainsi que l'émission et la signification d'un avis d'audience pour les deux premières plaintes lorsqu'on l'a informé que le juge visé par la plainte avait démissionné. Ainsi, cette cause ne relevait plus de la compétence du CMO et l'affaire a été classée parce qu'aucune autre mesure ne pouvait être prise à ce sujet.

DOSSIER N° 09-054/04

Le plaignant a comparu devant la Cour d'appel des infractions provinciales à propos d'une demande visant à prolonger le délai de paiement d'une contravention. Le plaignant n'a pas donné suite à sa demande, car il a réglé l'appel avec le procureur provincial, qui a présenté et expliqué le règlement au juge président.

Le plaignant a allégué que le juge a fait montre d'un « mauvais caractère », qu'il a abusé de son pouvoir judiciaire et qu'il a proféré des menaces inappropriées lorsqu'il a interrogé le procureur au sujet du règlement. Le plaignant a expliqué

qu'à la blague, il avait traité le juge de « dur à cuire » parce qu'il posait beaucoup de questions au sujet du règlement, ce à quoi le juge a répondu, selon le plaignant, « je serai beaucoup plus dur si je vous vois encore lire le journal dans cette salle ». Un mois plus tard, le plaignant a écrit une lettre au Conseil de la magistrature pour demander que sa plainte soit « annulée » et a signifié qu'il croyait que « tout le monde a droit à son opinion ».

Le sous-comité des plaintes a examiné la lettre de plainte, a demandé et étudié la transcription ainsi que la bande sonore de cette instance. Même si le plaignant a demandé que l'on retire sa plainte, le Conseil de la Magistrature était obligé de pour-suivre l'examen en conformité avec la loi. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il n'y avait aucune preuve d'inconduite judiciaire de la part du juge. De l'avis du sous-comité des plaintes, la bande sonore a démontré que le juge était toujours patient, courtois et professionnel. Le sous-comité des plaintes a expliqué que lorsque le juge posait des questions normales au procureur, le plaignant affichait un mauvais caractère, allant même jusqu'à traiter le juge de « dur à cuire ». Le sous-comité des plaintes a indiqué que la réponse du juge était calme et appropriée et qu'il n'avait fait que signifier au plaignant qu'il ne devrait pas lire le journal en cour. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-055/04

Les plaignants sont les grands-parents de deux enfants sujets d'un procès contesté de la Cour de la famille. Leur plainte déposée au Conseil de la magistrature de l'Ontario concerne le même juge

parutions. Après un examen exhaustif de ces documents, le sous-comité des plaintes a souligné qu'à aucun moment durant le procès ou le prononcé de son jugement, le juge n'a été impoli envers les témoins ou le jeune accusé. Le sous-comité des plaintes a assuré que le juge n'avait pas qualifié le jeune accusé de « bon à rien, violent et rancunier » et ne l'avait pas décrit comme tel, contrairement à ce qu'a affirmé la plaignante. En outre, le sous-comité a souligné qu'aucune preuve n'avait été fournie au tribunal selon laquelle le jeune homme était atteint d'une invalidité devant être prise en compte par le juge. Le sous-comité des plaintes était d'avis que le juge avait conclu les faits du procès en s'appuyant sur la crédibilité des témoins, y compris celle du jeune accusé. Le sous-comité a indiqué que la référence au mot « mut » était citée hors contexte. Dans les motifs de sa décision, le sous-comité a expliqué que le juge du procès a qualifié le groupe de jeunes (âgés de 12 à 14 ans) accompagnant le jeune contrevenant de « groupe de personnes ressemblant à "Mutt et Jeff" » (d'après les personnes d'une bande dessinée qui racontent les aventures de deux acolytes comparables à Laurel et Hardy, l'un étant grand et malchanceux et l'autre petit et simplet) et qu'il a par la suite désigné l'un des témoins en l'appelant « Mutt ». Le sous-comité des plaintes croit que, dans ce contexte, le juge a fait ces commentaires pour stimuler la conscience collective d'un groupe de garçons qui avaient séché l'école. En ce qui concerne l'allégation selon laquelle le juge aurait agi de façon trop amicale avec la mère de la victime, l'enregistrement a démontré que le juge lui avait simplement demandé si la date prévue pour la reprise de l'audience lui convenait, parce qu'elle tombait durant la période des vacances de Noël. Le sous-comité des plaintes a recommandé que la plainte

plaintes du Conseil. Après avoir examiné les plaintes, le sous-comité des plaintes a recommandé la suspension du juge visé. Le juge principal régional a accepté la recommandation du sous-comité des plaintes et a immédiatement suspendu le juge. On a mandaté un enquêteur d'obtenir plus de détails au sujet des plaintes et des allégations. Le rapport d'enquête, qui comprend les descriptions des entrevues avec les deux procureurs adjoints de la Couronne, a été examiné et le sous-comité des

plaintes du Conseil. Après avoir examiné les plaintes, le sous-comité des plaintes a recommandé la suspension du juge visé. Le juge principal régional a accepté la recommandation du sous-comité des plaintes et a immédiatement suspendu le juge. On a mandaté un enquêteur d'obtenir plus de détails au sujet des plaintes et des allégations. Le rapport d'enquête, qui comprend les descriptions des entrevues avec les deux procureurs adjoints de la Couronne, a été examiné et le sous-comité des plaintes du Conseil. Après avoir examiné les plaintes, le sous-comité des plaintes a recommandé la suspension du juge visé. Le juge principal régional a accepté la recommandation du sous-comité des plaintes et a immédiatement suspendu le juge. On a mandaté un enquêteur d'obtenir plus de détails au sujet des plaintes et des allégations. Le rapport d'enquête, qui comprend les descriptions des entrevues avec les deux procureurs adjoints de la Couronne, a été examiné et le sous-comité des

DOSSIER N° 09-053/04

soit rejetée, car elle reposait sur les conclusions relatives à la crédibilité du fils de la plaignante plutôt que sur une inculpation judiciaire de la part du juge président. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

cerne la divulgation de renseignements de la part du procureur de la Couronne ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-049/04

Le plaignant était l'intimé d'une instance de la Cour de la famille au sujet de la garde et des droits de visite d'enfants ainsi que de leur pension alimentaire. Le plaignant a soutenu que le juge avait un « parti pris » au cours d'une audience non contestée et qu'il l'avait empêché, ainsi que son avocat, de donner sa version des faits.

Le sous-comité des plaintes a étudié la plainte, puis a demandé et examiné la transcription ainsi que la bande sonore de l'instance. Le sous-comité des plaintes a souligné que, dans le cas d'une affaire conjugale ou familiale, l'intimé dispose de trente jours pour produire une réponse et un état financier sous serment ou, s'il a des motifs valables de le faire, pour demander l'autorisation de les déposer plus tard. Si l'intimé omet de se conformer à ces règles, on constatera son défaut et l'instance se poursuivra sans qu'il en soit informé. Le sous-comité des plaintes a souligné que dans ce dossier, l'intimé a omis de produire les documents selon les règles et n'a pas demandé l'autorisation de les déposer plus tard. Le sous-comité des plaintes a en outre souligné qu'après que le tribunal eut constaté le défaut de l'intimé et fixé une date pour une audience non contestée, le plaignant a comparu avec un avocat et a demandé à déposer des documents qui, de l'aveu de tous, étaient incomplets. Le sous-comité des plaintes a recommandé que la plainte

DOSSIER N° 09-052/04

soit rejetée, car à son avis, il n'y a pas de preuve d'inconduite judiciaire dans la façon dont le juge a exercé son pouvoir discrétionnaire pour procéder de façon non contestée. En fait, selon le sous-comité des plaintes, il était génèreux de la part du juge d'offrir de retirer son ordonnance si les avocats et les parties en arrivaient à une autre entente. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien conclu à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, elles ne relèvent pas de la compétence du Conseil de la magistrature. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

La plaignante est la mère d'un jeune homme reconnu coupable d'avoir protégé des menaces de mort à l'endroit de sa petite amie. La plaignante a allégué que le juge du procès avait insulté son fils ainsi que d'autres témoins, traitant l'un d'entre eux de « mut » (ce qui peut être insultant, car en anglais, ce mot signifie « crétin »), et qu'il avait accusé son fils d'être « bon à rien, violent et rancunier », même s'il souffre « d'invalidités ». La plaignante a également soutenu que le juge du procès avait agi de façon trop amicale avec la mère de la victime en confirmant sa disponibilité à se présenter en cour à la date fixée pour le jugement.

Le sous-comité des plaintes a étudié les documents de la plainte ainsi que les transcriptions du procès et les motifs du jugement soumis par la plaignante. Le sous-comité des plaintes a demandé et examiné la transcription de la procédure relative à la détermination de la sentence de même que les bandes sonores de toutes les com-

tique et hors de contrôle », en raison de la façon dont le juge a traité l'accusé et sa famille.

Le sous-comité des plaintes a examiné cette plainte en même temps que le dossier n° 09-027/03. Le sous-comité des plaintes a demandé et examiné la transcription de l'instance, de même que la réponse du juge visé. Dans sa réponse, le juge visé a admis que son comportement au moment de diriger l'instance était inapproprié et inefficace. Après avoir examiné les documents, le sous-comité des plaintes a recommandé que la plainte soit déferée au juge en chef. Le comité d'examen a accepté la recommandation du sous-comité des plaintes de déferer cette plainte et une autre plainte semblable (dossier n° 09-027/03) au juge en chef.

Dans son rapport présenté au comité d'examen, le juge en chef a indiqué que le juge visé avait reconnu qu'il avait agi de façon inappropriée et négligente au cours de ce qu'il qualifie d'un des procès les plus difficiles qu'il ait eu à présider. Selon le juge en chef, le juge visé a exprimé des regrets d'avoir semble négocier un règlement avec l'accusé et la victime et a admis que son comportement n'était pas conforme à ce que l'on pouvait attendre d'un juge de la Cour de justice de l'Ontario. Le juge en chef s'est dit convaincu que le juge comprenait les inquiétudes du Conseil et a recommandé que l'on ne prenne pas d'autres mesures relativement à cette plainte. Les membres du comité d'examen ont déclaré être satisfaits du rapport du juge en chef et ont accepté la recommandation de classer l'affaire.

DOSSIER N° 09-048/04

Trois chefs d'accusation de fraude pesaient contre le plaignant, qui a été libéré après avoir signé

une « promesse de comparaitre », et la date du procès a été fixée en février 2004. Avant que le procès n'ait lieu, d'autres accusations de fraude ont été portées contre le plaignant, qui a été libéré sous caution pour chacun d'entre elles. Le juge visé par la plainte a décidé de conserver la date du procès en février 2004 pour les premiers chefs d'accusation, et de tenir des instances différentes pour les autres accusations. Le plaignant a allégué que le juge visé avait forcé la tenue du procès pour les accusations initiales, sans égard au fait que a) pendant la majeure partie des audiences préparatoires au procès, l'accusé n'était pas représenté; b) l'accusé venait tout juste de retenir les services d'un avocat; c) son nouvel avocat n'était pas disponible à la date fixée pour le procès, et d) l'accusé, ainsi que son nouvel avocat, n'avaient pu recevoir de renseignements à propos des accusations initiales, malgré de nombreux essais et demandes. Le plaignant a également soutenu que le juge visé avait affirmé que le procès se tiendrait à la date fixée, peu importe si lui et son avocat étaient préparés, et que le plaignant soit représenté ou non.

Le sous-comité des plaintes a examiné la plainte et a recommandé qu'elle soit rejetée, car à son avis, il n'y avait aucune preuve d'inconduite judiciaire dans la façon dont le juge avait exercé son pouvoir discrétionnaire pour mener cette affaire ni dans la décision de conserver la date du procès qui avait été fixée. Si le juge a commis des erreurs de droit, et le Conseil de la magistrature n'a rien conclu à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, elles ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le sous-comité des plaintes a également souligné que les problèmes qu'a connus le plaignant en ce qui con-

fondement car les allégations à son endroit n'avaient pas été prouvées.

Le sous-comité des plaintes a examiné la plainte et la transcription de l'enquête sur le cautionnement soumises par le plaignant. Le sous-comité des plaintes a noté que l'accusé était représenté par un avocat et que le juge ne s'était jamais adressé directement à lui. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car rien dans la transcription n'indiquait que le plaignant avait été critiqué, injurié ou humilié. Le sous-comité des plaintes a souligné que, pour imposer le cautionnement, la cour avait exercé son pouvoir discrétionnaire en sapuyant sur les observations et les faits qui lui avaient été soumis, et que la condition interdissant au plaignant de travailler comme huissier avait été infirmée en appel. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-046/04

La plaignante, une victime d'agression sexuelle, a comparu devant le juge visé lors de l'audience de détermination de la peine de son mari, qui avait plaidé coupable à l'accusation d'agression. (c) L'audience de détermination de la peine était déjà liée à une plainte ayant fait l'objet d'une enquête dans le dossier n° 09-027/03 du CMO. Dans sa lettre adressée au Conseil de la magistrature, la plaignante a affirmé qu'elle et sa famille avaient été « horrifiées, choquées et honteuses » de la façon dont le juge avait mené le procès. La plaignante a allégué que le juge avait manifesté de l'ennui et du désintérêt et qu'il avait laissé l'accusé et sa famille interrompre le procès, ce qui l'a inutilement soumise à un traitement cruel de leur part. La plaignante a décrit la situation en cour comme étant « chaotique

représenté par l'avocat de service, a soutenu qu'il avait été forcé de plaider coupable et qu'on l'avait empêché de s'exprimer et d'obtenir les papiers dont il avait besoin, et qu'on l'avait privé de son appareil de correction auditive.

Le sous-comité des plaintes a étudié les documents soumis par le plaignant et a demandé et examiné la transcription des instances. Le sous-comité des plaintes a souligné que l'accusé était représenté par un avocat et que le juge s'était assuré qu'il entendait bien et qu'il comprenait les instances du procès ainsi que la sentence qui lui a été imposée. Le sous-comité des plaintes a également souligné que l'accusé/le plaignant n'avait pas présenté de demande en vue d'obtenir des documents ni démontré qu'il s'inquiétait au sujet de sa plaidoirie. Le sous-comité des plaintes a recommandé que la plainte soit rejetée comme étant sans fondement après que la transcription de l'instance eut démontré que le juge ne s'était pas conduit de façon inappropriée. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-045/04

Le plaignant est un huissier accusé d'introduction par infraction ainsi que d'autres infractions criminelles survenues pendant l'exercice de ses fonctions d'huissier. Pendant l'enquête sur le cautionnement, le plaignant a soutenu que le juge l'avait vivement critiqué, injurié et humilié. Le plaignant a souligné certains commentaires précis du juge, soit « je ne sais pas comment cet homme a fait pour obtenir un permis d'huissier avec un casier judiciaire » et « personnellement, je l'aurais arrêté en une minute ». Le plaignant a également affirmé que la décision du juge de lui interdire de travailler comme huissier était sans

thoraciques. En outre, le plaignant a affirmé avoir envoyé sa caution à la cour pour demander un ajournement en son nom. Un mandat d'arrêt a été émis contre lui et le plaignant a soutenu que le juge n'avait pas la compétence nécessaire pour émettre ce mandat, parce que le juge président ne pratiquait habituellement à cet endroit.

Le sous-comité des plaintes a examiné les documents fournis par le plaignant. Il a souligné que tous les juges de la Cour de justice de l'Ontario ont la compétence d'émettre un mandat d'arrêt, même s'ils ne président pas périodiquement dans la ville où il est émis. Le sous-comité des plaintes a affirmé qu'en raison de l'absence de l'accusé à son procès, malgré des preuves attestant qu'il avait été avisé de la date du procès ainsi que de ce que l'on attendait de lui, le juge avait raison d'émettre un mandat d'arrêt afin qu'il se présente en cour. Selon le sous-comité des plaintes, si une urgence médicale valable a empêché l'accusé de se rendre en cour, il aurait dû en fournir la preuve à l'avocat de service lorsqu'il a finalement plaidé coupable aux accusations. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car elle n'était pas fondée. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-043/03

Le plaignant a été accusé de plusieurs infractions criminelles, notamment « de conduite avec facultés affaiblies, de refus de fournir un échantillon d'haléine, de conduite dangereuse et de tentative d'échapper aux agents de police ». Après un certain nombre d'ajournements et de délais, entre autres l'émission d'un mandat d'arrêt contre l'accusé pour qu'il se présente en cour, le procès a enfin eu lieu. Dans sa lettre, le plaignant,

instances de la requête d'outrage au tribunal ainsi que l'examen de la requête elle-même, qui a été effectuée par l'autre juge (qui n'est pas visé par la plainte). Le sous-comité des plaintes a mentionné qu'en juillet 2003, la juge visée par la plainte n'était pas au courant qu'une ordonnance de divorce avait été rendue, ni qu'elle traitait déjà des questions de garde et de droits de visite. En bout de ligne, un autre juge de l'Ontario a rejeté la requête pour outrage au tribunal du père en raison du défaut de compétence puisque l'ordonnance de divorce avait préséance sur l'ordonnance rendue en 1998 par la Cour de la famille. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il était d'avis que la juge visée avait pris une décision appropriée en fonction de la preuve restreinte qui lui avait été soumise et qu'elle avait rendu une ordonnance discrétionnaire limitée dans sa portée et son caractère exécutoire. Le sous-comité des plaintes a souligné qu'une fois que des renseignements supplémentaires avaient été présentés en cour et qu'un autre juge avait révisé l'ordonnance, le droit de visite avait été annulé et la requête pour outrage au tribunal rejetée pour défaut de compétence de la Cour de justice de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-042/03

Le plaignant a été accusé d'infraction criminelle et s'est défendu lui-même lors des audiences pré-paratoires au procès. Après un certain nombre d'ajournements, la date du procès a été fixée, mais l'accusé/le plaignant ne s'y est pas présenté. Dans une lettre adressée au Conseil, le plaignant a expliqué qu'il avait un rendez-vous avec son médecin et qu'il devait passer des examens relativement à des étourdissements et à des douleurs

ordonné de se taire. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-040/03

Le plaignant était un membre du public qui, après avoir lu un article dans son journal de quartier, s'est plaint des commentaires qu'un juge a formulés en prononçant la sentence de la partie défenderesse dans une cause criminelle de violence familiale. Il a semblé au plaignant que les commentaires du juge selon lesquels le défendeur ne faisait « que ce qu'on lui a si bien appris » par donnaient la violence du défendeur envers sa conjointe. Selon le plaignant, le message qui se dégageait des commentaires du juge était inapproprié. Le plaignant a de plus qualifié la sentence imposée par le juge de « parodie de la justice ».

Le sous-comité des plaintes a étudié la plainte et l'article de journal fourni par le plaignant. Il a ensuite demandé et examiné la transcription de tout le procès, ainsi que le prononcé de la sentence de la partie défenderesse. Selon le sous-comité des plaintes, même si le juge a utilisé les mots à l'origine de la plainte, l'article de journal auquel le plaignant faisait allusion avait cité les commentaires du juge hors de leur contexte. Après avoir examiné la transcription, le sous-comité des plaintes a souligné que le juge avait bien reconnu et exposé les problèmes de violence familiale et la nécessité de dénoncer de tels comportements. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il était d'avis que dans leur contexte, les observations du juge ne constituaient pas une inconduite judiciaire et que le juge a imposé la sentence selon son pouvoir discrétionnaire. Si le juge a

DOSSIER N° 09-041/03

commis des erreurs de droit, et le Conseil de la magistrature n'a rien conclu à cet égard, ces dernières peuvent faire l'objet d'un appel par la Couronne et, en l'absence de preuve d'inconduite judiciaire, elles ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

La plaignante est une mère qui avait obtenu la garde de ses enfants lorsqu'elle habitait en Ontario en 1998. Le père des enfants avait obtenu un droit de visite restreint. La plaignante/mère a par la suite déménagé en Saskatchewan et a finalement obtenu un divorce assorti de conditions concernant la garde et le droit de visite. En juillet 2003, pendant que la mère était de retour en Ontario pour y passer des vacances, le père a présenté une requête pour outrage à l'ordonnance antérieure du tribunal et a demandé un droit de visite. Le sous-comité des plaintes a indiqué que la cour est convaincue que la mère, qui ne s'est pas présentée à la requête, avait bien reçu un avis de requête. La juge visée par la plainte a rendu une ordonnance accordant au père le droit de voir ses enfants lorsqu'ils se trouvent en Ontario, conformément à l'ordonnance rendue en 1998 par la Cour de la famille. La plaignante a soutenu qu'en accordant à la requête en juillet 2003 et en ordonnant un droit de visite au père, la juge a dépassé son champ de compétences et a causé du stress et de l'anxiété à elle ainsi qu'à sa famille.

Le sous-comité des plaintes a examiné la plainte, puis a demandé et étudié les transcriptions des

et qu'il avait refusé d'entendre certaines des preuves qu'il désirait apporter.

Le sous-comité des plaintes a examiné la plainte, et a demandé et reçu une transcription du procès et de la décision au sujet de la demande du plaignant. Selon le sous-comité des plaintes, aucune des allégations n'était étayée par les documents du plaignant. Le sous-comité des plaintes était également d'avis que les transcriptions de l'instance n'appuyaient pas les allégations selon lesquelles le juge avait rabaisé ou dénigré le plaignant et son père ou fait des blagues au sujet des invalidités du père ou des croyances religieuses du plaignant. Comme aucune preuve ne corroborait les allégations du plaignant, le sous-comité des plaintes a recommandé le rejet de la plainte. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-038/03

Le plaignant a été accusé de harcèlement criminel et à la suite de son procès, il a été reconnu coupable et condamné à une probation de deux ans. Selon le plaignant, sa condamnation était une erreur et la sentence rendue par le juge président était trop sévère.

Le sous-comité des plaintes a examiné la plainte et a demandé et étudié la transcription des motifs de la décision fournie par le juge président. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il n'y avait pas de preuve d'inconduite judiciaire dans la façon dont le juge a exercé son pouvoir discrétionnaire concernant les décisions qu'il a prises dans cette affaire. Si le juge a commis des erreurs de droit, et le Conseil

de la magistrature n'a rien conclu à cet égard, ces dernières peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, elles ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-039/03

La plaignante était requérante dans une affaire de la Cour des petites créances. Durant l'audience préparatoire au procès, qui se déroulait en chambre et ne figure pas au dossier, la plaignante a soutenu que le juge avait été impoli, injuste et qu'il lui avait ordonné de ne pas parler, sinon on appellerait la police.

Le sous-comité des plaintes a examiné les documents relatifs à la plainte et a demandé et reçu une réponse du juge parce qu'il n'y avait pas de transcription pour cette comparution. Dans sa réponse, le juge a déclaré ne pas avoir de souvenirs précis de l'audience préparatoire ni des allégations de la plaignante concernant un appel à la police. En outre, le juge a affirmé que toutes les conférences préparatoires se déroulent de façon juste et équitable et a assuré au Conseil que toutes les parties ont la possibilité d'exprimer leur opinion. Le sous-comité des plaintes a souligné que le but d'une audience préparatoire est de donner son opinion à propos des probabilités de succès du dossier ou de la défense d'une personne, ce que le juge a fait dans cette affaire. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, car il a été impossible de trouver une preuve objective corroborant les allégations de la plaignante selon lesquelles le juge avait été impoli ou lui avait

Dans son rapport au comité d'examen, le juge en chef a souligné que le juge visé avait pris des dispositions pour consulter un thérapeute de façon périodique et qu'il avait assisté à des séances de gestion du stress et de la colère depuis qu'il avait pris connaissance de cette plainte. En outre, le juge en chef a confirmé que le juge avait envoyé une lettre d'excuses au plaignant. Le juge en chef était convaincu que le juge avait rapidement reconnu la gravité de sa conduite lorsqu'elle lui a été signalée et qu'il avait pris des mesures pour éviter qu'elle ne se reproduise. Le juge en chef a avisé le comité d'examen qu'il attendait le rapport du thérapeute et a recommandé que l'on ne prenne pas d'autres mesures relativement à cette plainte. Les membres du comité d'examen ont déclaré être satisfaits du rapport du juge en chef et ont accepté la recommandation de classer l'affaire

DOSSIER N° 09-036/03

Le plaignant a rempli une demande en vertu de la Loi sur les armes à feu et a dû redemander un permis pour sa carabine et son fusil de chasse. La demande a été refusée par le préposé aux armes à feu et le plaignant en a appelé devant les tribunaux. Après une journée d'examen de la demande et du refus d'accorder un permis pour les armes à feu, la décision du préposé aux armes à feu a été maintenue par le juge président et la demande de permis a été rejetée. Le plaignant a allégué une incohérence du juge et a soutenu que ce dernier « a fait de la discrimination envers les personnes handicapées, qu'il a rabaisé et dénigré le plaignant et son père en plus de faire des blagues désobligeantes à leur sujet, au sujet des invalidités ». En outre, le plaignant a allégué que le juge avait exercé une discrimination contre ses croyances religieuses

par un juge (qui n'est pas visé par la plainte) pour qu'il verse une pension alimentaire à l'enfant en attendant le procès. Par la suite, le même juge a mené l'affaire devant les tribunaux sans contestation parce que l'intimé (le plaignant) n'avait pas versé la pension alimentaire comme il le devait. Le plaignant a comparu devant le juge visé par la présente plainte pour lui demander d'ordonner au Bureau des obligations familiales de ne pas suspendre son permis de conduire. Le plaignant a allégué que pendant sa comparution devant le juge visé, celui-ci s'est adressé à lui en criant et lui a manqué de respect.

Le sous-comité des plaintes a étudié la plainte et a demandé puis reçu une copie de la transcription et de la bande sonore de l'instance. Le sous-comité des plaintes, après avoir examiné les documents, a recommandé que cette plainte soit renvoyée au juge en chef. Lorsqu'il a formulé cette recommandation, le sous-comité des plaintes a suggéré un ensemble de conditions devant être acceptées par le juge. Selon ces conditions, le juge devra s'excuser au plaignant et même accepter d'assister à des séances de gestion du stress et de la colère pour lesquelles il obtiendra, au besoin, un congé autorisé. Le comité d'examen a accepté la recommandation du sous-comité des plaintes, selon laquelle la plainte devrait être déferée au juge en chef avec les conditions susmentionnées. Lorsqu'il a accepté la condition selon laquelle le juge devrait consulter un thérapeute, le comité d'examen a ajouté le juge en chef doit assurer le suivi de ces consultations. Les documents de la plainte ont été fournis au juge visé et il a admis que la plainte n'était pas sans fondement. La plainte a été déferée au juge en chef de la Cour de l'Ontario pour qu'il l'examine avec le juge visé en même temps qu'une autre plainte semblable (dossier n° 08-038/03).

DOSSIER N° 09-031/03

souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

La plaignante était informatrice et témoin pour la Couronne dans une affaire de voies de fait criminelles. La plaignante a allégué que le juge avait fait montre de discrimination à son égard en l'empêchant de donner sa version des faits et de déposer des preuves photographiques.

Le sous-comité des plaintes a examiné la plainte et a demandé et examiné la transcription de l'instance. Le sous-comité des plaintes, n'a rien trouvé dans la transcription qui appuyait les allégations de la plaignante ni aucune preuve d'inconduite judiciaire de la part du juge président. Le sous-comité des plaintes a souligné qu'il s'agissait d'une affaire criminelle et qu'il combattait donc au procureur de la Couronne de décider des preuves et des témoignages devant être fournis par les témoins. Si le juge a commis des erreurs de droit en ne permettant pas le dépôt de certaines preuves (et le Conseil de la magistrature n'a rien conclu à cet égard), ces erreurs peuvent faire l'objet d'un appel de la Couronne et, en l'absence de preuve d'inconduite judiciaire, elles ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le sous-comité des plaintes a donc recommandé le rejet de la plainte. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

DOSSIER N° 09-034/03

Le plaignant était l'intime dans une instance de la Cour de la famille portant sur la responsabilité et l'obligation de verser une pension alimentaire à sa fille. Une ordonnance provisoire a été rendue

dernière s'était entretenue avec l'accusé et avait offert de retirer les accusations s'il y avait restitution pour une fenêtre brisée. Le plaignant estimait que cette offre équivalait à de l'extorsion parce que de son point de vue, l'accusé n'avait pas participé au bris de la fenêtre. La question a été ramenée devant le tribunal et le plaignant a allégué que la juge avait passé une remarque gratuite et inutile à l'accusé, ce qui avait eu pour effet de le presser d'accepter la transaction pénale de la Couronne.

Le sous-comité des plaintes a examiné la plainte et demandé et étudié la transcription et la bande sonore des procédures. Le sous-comité des plaintes a souligné que la transcription confirmait qu'en accordant l'ajournement, la juge s'était adressée à l'accusé et, après avoir confirmé que l'accusé « s'était entretenu avec la Couronne pour déterminer les solutions de rechange qui souffraient à la poursuite de l'affaire », avait ajouté : « Tout vaut mieux qu'une condamnation ». Le sous-comité des plaintes a ensuite demandé une réponse au juge. Dans sa lettre de réponse, la juge a confirmé les commentaires transcrits, mais a déclaré que, comme elle n'était au courant ni des discussions tenues entre la Couronne, l'avocat de service et l'accusé, ni de la divulgation faite par la Couronne, rien ne pouvait la porter à croire qu'il y avait eu irrégularité. Bien que le sous-comité des plaintes estime que le commentaire « Tout vaut mieux qu'une condamnation » était un commentaire gratuit et inutile, qui n'aurait jamais dû être formulé, il a recommandé que la plainte soit rejetée puisque la conduite de la juge ne répondait pas aux critères d'inconduite judiciaire établis par la Cour suprême du Canada dans l'affaire Therrien c. Ministre de la Justice et autres (2001), 155 C.C.C. (3d) 1. Le comité d'examen a

attendues d'un juge et il a indiqué que le juge visé avait ressenti une angoisse importante en relation avec cette affaire. Le juge en chef s'est par ailleurs dit convaincu que le juge visé comprenait les préoccupations du Conseil et a indiqué qu'il n'allait pas répéter un tel comportement à l'avenir. Le juge en chef a recommandé qu'aucune autre mesure ne soit prise en relation avec cette plainte et que l'affaire soit classée. Les membres du comité d'examen se sont déclarés satisfaits du rapport du juge en chef et ont accepté la recommandation visant à classer l'affaire.

N° DE DOSSIER 09-029/03

Le plaignant comparait devant le tribunal à la suite d'accusations de vol de moins de 5 000 \$ et avait été reconnu coupable. Le plaignant n'était pas représenté par un avocat lors du procès et avait indiqué qu'au cours de la période entre sa condamnation et la date de détermination de sa peine, il s'était entretenu avec un avocat, qui selon lui pouvait s'être trouvé au palais de justice à titre d'avocat de service, afin d'obtenir des conseils. Le plaignant a allégué que cet avocat s'était adressé au juge en son nom et qu'il était reparti « en secouant la tête », déclarant au plaignant : « J'ignore ce que vous lui avez fait... Il [le juge] a dit : "Je vais coincer cet homme" [le plaignant]. Je ne peux supporter son arrogance ». Le plaignant a indiqué qu'il écrivait au Conseil de la magistrature pour « voir à ce que justice soit faite et que des dommages-intérêts soient VERSÉS ».

Les membres du sous-comité des plaintes chargé de cette enquête ont demandé une copie de la transcription du procès et de la détermination de la peine. Ils ont également demandé et obtenu une réponse à la plainte de la part du juge du

procès. Le juge a nié avoir prononcé les paroles qui lui étaient attribuées et a souligné que la Couronne, dans cette affaire, avait demandé une « peine d'emprisonnement ayant un effet "traitements de choc" », plutôt que l'amende qu'il avait ordonnée. Le sous-comité des plaintes a ensuite écrit à l'avocat avec qui le plaignant avait déclaré s'être entretenu. Dans sa réponse au Conseil de la magistrature, l'avocat ne se souvenait pas avoir représenté le plaignant ou que ses services aient été retenus par ce dernier, mais il reconnaissait qu'il pouvait avoir discuté avec lui pendant sa pause-repas ou au cours d'un moment libre. L'avocat a indiqué qu'il pouvait avoir discuté avec la Couronne au nom du plaignant mais qu'il n'aurait pas rencontré le juge du procès et il a catégoriquement nié avoir relaté les remarques rapportées par le plaignant.

Puisque les allégations du plaignant étaient contradictoires par un témoin indépendant, le sous-comité des plaintes a conclu que les allégations étaient sans fondement et a recommandé que la plainte soit rejetée parce qu'elle était jugée sans fondement. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

N° DE DOSSIER 09-030/03

Le plaignant a comparu à titre d'avocat de service pour une personne accusée et reconnue coupable d'un chef d'accusation de méfait de fait et d'un chef d'accusation de méfait de moins de 5 000 \$. Le plaignant s'est adressé à l'accusé et a examiné les pièces qui, à son avis, justifiaient l'idée préalable de l'accusé de plaider « non coupable » à l'accusation de dommage matériel. Le plaignant a par la suite été avisé par la Couronne que cette

La réponse du juge comprenait également une réfutation précise de l'allégation selon laquelle il aurait les causes « à l'extérieur de la ville » dans le but de séviter du travail. Sa réponse expliquait en détail les motifs de l'ajournement dans le cas précis mentionné par le plaignant. Le sous-comité des plaintes et les membres du comité d'examen ont été convaincus par les explications du juge quant aux plaintes relatives à ses pratiques et méthodes, et ont convenu qu'aucune mesure supplémentaire ne s'imposait.

Le juge, cependant, a admis le caractère inapproprié de la conduite qu'il avait adoptée lors de l'audience de détermination de la peine qui faisait l'objet de l'article de journal. Le sous-comité des plaintes a recommandé que la plainte soit déferée au juge en chef et le comité d'examen a souscrit à la recommandation du sous-comité des plaintes de déferer la plainte au juge en chef avec une plainte similaire (dossier no 09-046/04).

Après s'être entretenu avec le juge visé, le juge en chef a remis son rapport au comité d'examen et indiqué que le juge avait immédiatement reconnu qu'il avait agi d'une façon inappropriée et insouciant dans cette affaire en particulier. Cette audience de détermination de la peine faisait également l'objet d'une plainte de la victime de voies de fait et constituait le fondement du dossier 09-046/04, examiné conjointement avec cette affaire. Le juge en chef a indiqué que le juge visé avait expliqué que cette instance était l'une des plus difficiles qu'il avait eu à présider et que les circonstances entourant l'audience avaient contribué à la conduite à l'origine des plaintes. Le juge en chef a indiqué que le juge visé exprimait ses regrets sincères pour la conduite qu'il reconnaissait comme étant inférieure aux normes

proposition conjointe pour la détermination de la peine, mais que, comme ils en étaient incapables, il avait « tenu une enchère dans la salle d'audience et demandé à chaque personne [y compris l'accusé] ce qu'elle pensait de sa peine ».

Le sous-comité des plaintes a examiné les documents relatifs à la plainte et a demandé et étudié les transcriptions des deux instances précises auxquelles le plaignant avait fait allusion. Le sous-comité des plaintes a également demandé et obtenu une réponse du juge visé en relation avec les préoccupations de son collègue. Le juge visé a eu la possibilité d'attendre la réception de la transcription des deux instances précises avant de répondre à la plainte. Cependant, le juge visé a choisi de répondre immédiatement à la plainte, de façon à résoudre le problème le plus rapidement possible.

Dans sa réponse, le juge visé a nié la plupart des allégations relatives à sa gestion générale des salles d'audience, de même que son prétendu manque d'empressement à aider ses collègues. Il a catégoriquement nié « ne pas écouter les arguments relatifs à la détermination des peines » et a déclaré qu'il « encourageait la résolution des procès en incitant les avocats à tenter de résoudre d'eux-mêmes les affaires avant le procès ou au cours de l'audience préparatoire au procès », mais que s'ils en étaient incapables, il avait toujours été prêt à tenir une conférence judiciaire préalable au procès. Le juge a également catégoriquement nié « ne pas aimer présider les procès » et « exercer des pressions sur les gens, tant directement qu'indirectement, pour régler les affaires », comme il avait été allégué, et il a fourni des renseignements sur l'attribution des causes dans sa région pour réfuter l'allégation.

parfois en disant : « Si vous ne répondez pas à ma question, je vous donne trois choix, le premier, la prison à vie, le deuxième être fusillé à l'aube par un peloton d'exécution ou le troisième, être plongé dans l'huile bouillante ». Le juge a indiqué qu'il utilisait exactement ces termes et jamais de façon sérieuse. Le sous-comité des plaintes a fait savoir que le juge avait indiqué que, compte tenu de la plainte, il allait s'efforcer de ne plus formuler de tels commentaires à l'avenir.

Le sous-comité des plaintes a recommandé que la plainte soit rejetée puisqu'il n'existait aucune preuve indépendante venant corroborer les allégations du plaignant. Les membres du comité d'examen n'ont pas souscrit à la recommandation du sous-comité des plaintes et recommandé que le Conseil de la magistrature déclare la plainte à la juge en chef de la Cour supérieure de justice afin qu'elle s'entretienne avec le juge en question des commentaires inadmissibles formules. La juge en chef de la Cour supérieure de justice a indiqué au comité d'examen qu'elle avait rencontré le juge qui faisait l'objet de la plainte et qu'elle avait examiné avec lui les préoccupations du Conseil, puis elle s'est dite convaincue que le juge avait compris que le langage utilisé était inapproprié et injustifié et qu'il devait éviter d'adopter une telle conduite à l'avenir. Le comité d'examen s'est déclaré satisfait du rapport de la juge en chef et a recommandé que l'affaire soit classée et que le plaignant soit avisé du résultat de sa plainte.

N° DE DOSSIER 09-027/03

Le plaignant était un juge qui visitait une région judiciaire où présidait le juge faisant l'objet de la plainte. Le plaignant a indiqué que la conduite et les pratiques qu'adoptait constamment le juge

visé en salle d'audience le discréditaient lui-même, ainsi que l'administration de la justice. Le plaignant a indiqué que les allégations étaient fondées sur des observations personnelles, sur des plaintes faites par les avocats et le personnel du tribunal au plaignant, sur des conversations entendues entre des employés et sur un article de journal portant sur une affaire en particulier, lequel est joint à la lettre de plainte. Le plaignant se sentait tenu de porter plainte parce que l'avocat et le personnel du tribunal semblaient hésiter à le faire eux-mêmes en raison des répercussions possibles pour eux.

La conduite faisant l'objet de la plainte comprenait des allégations selon lesquelles le juge visé « n'aimait pas écouter les arguments présentés au moment du prononcé de la sentence », « n'aimait pas présider les procès », « exerçait des pressions sur les gens, tant directement qu'indirectement, pour régler les affaires », et « était reconnu pour tourner le dos à la cour et déclarer qu'il n'allait pas en écouter davantage et désirait recevoir des propositions conjointes pour la détermination de la peine ». Le plaignant a également allégué que le juge visé « faisait tout pour s'éviter du travail en ajoutant les causes sous n'importe quel prétexte » et qu'il entendait donc peu de procès et « causait du chaos et des délais ». Le plaignant citait l'exemple précis du témoignage d'un enfant qui devait être entendu en région périphérique, mais qui avait été ajourné par le juge visé afin qu'une autre date soit fixée, à un endroit différent.

Le plaignant avait par ailleurs joint un article de journal concernant une audience de détermination de la peine tenue au cours des mois précédents. Le plaignant soutenait que dans ce cas en particulier, le juge visé avait exigé que les avocats de la Couronne et de la défense présentent une

Le plaignant est le demandeur dans une affaire relevant de la Cour des petites créances pour un litige avec un voisin concernant une clôture. Le plaignant a indiqué dans sa lettre au Conseil de

N° DE DOSSIER 09-026/03

bande sonore de l'instance. Le sous-comité des plaintes a recommandé que la plainte soit rejetée après qu'un examen de la transcription et de la bande sonore eut démontré que le juge était patient et calme, et qu'il avait présenté des motifs logiques, justes et instructifs. Le sous-comité des plaintes était d'avis que le juge n'a pas été impartial et n'a pas manqué de respect, et il a donné au plaignant amplement l'occasion de présenter ses éléments de preuve. Le sous-comité des plaintes a souligné que l'affaire avait été ajournée pour permettre au plaignant de présenter sa preuve d'expert. Le registre indiquait que l'expert du plaignant n'était pas en mesure de se présenter au tribunal à la première date et que l'affaire avait été ajournée à la date en question pour lui permettre d'être présente. Le sous-comité a par ailleurs souligné que le plaignant ne s'était pas assuré de la disponibilité de son expert pour témoigner, mais qu'il voulait soumettre son rapport, sans avoir fourni d'avis approprié. Sa demande à cette fin a été refusée par le juge. Si le juge a commis des erreurs de droit en ne permettant pas que le rapport soit déposé comme preuve, ou en relation avec toute autre question de droit qu'il a tranchée (et le Conseil de la magistrature n'a rien conclu à cet égard), ces erreurs peuvent faire l'objet d'un appel et, en l'absence de preuve d'inconduite judiciaire, elles ne relèvent pas de la compétence du Conseil de la magistrature de l'Ontario. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

Le sous-comité des plaintes a examiné la plainte et demandé la transcription et la bande sonore de l'instance. Les Services aux tribunaux ont confirmé que l'audience préparatoire au procès n'était pas retranscrite et qu'aucune bande sonore ni transcription ne pouvait être fournie. Le sous-comité des plaintes a ensuite demandé une réponse au juge. Dans sa lettre de réponse, le juge a nié avoir déclaré qu'il ne pouvait consacrer beaucoup de temps à cette affaire puisqu'une affaire importante devait suivre, comme le soutient le plaignant, et il a par ailleurs indiqué qu'il considérerait toutes les affaires importantes et dignes de recevoir la même attention. En outre, le juge a indiqué qu'il avait étudié la documentation et lu le dossier à l'avance, et qu'il se rappelait que le demandeur avait préparé une réclamation bien étayée comportant de nombreuses pièces jointes. En ce qui concerne l'allégation selon laquelle le juge aurait menacé les parties d'emprisonnement si elles prenaient la parole, le juge a indiqué qu'il s'efforçait habituellement d'alléger les tensions des parties litigantes et qu'il blaguait

la magistrature qu'il était bien préparé et que ses éléments de preuve étaient bien étayés au moment où il a comparu devant le juge visé au cours de l'audience préparatoire au procès. Le plaignant a allégué que le juge avait déclaré qu'il « ne pouvait consacrer beaucoup de temps à cette affaire puisqu'une affaire importante devait suivre ». Le plaignant a par ailleurs allégué que le juge n'avait pas examiné les éléments de preuve déposés à l'avance par le plaignant et qu'il avait refusé de les examiner au cours de l'audience préparatoire au procès. Le plaignant a indiqué que ni lui, ni l'intimé n'avaient eu l'autorisation de prendre la parole et il a soutenu que le juge avait déclaré que « si [ils parlaient], il allait [les] envoyer en prison ».

N° DE DOSSIER 09-023/03

La plaignante est une employée du tribunal ayant précédemment été victime d'une agression commise par un juge président à l'endroit où elle travaillait. Le juge qui l'avait précédemment agressée avait été suspendu avec solde, en attente d'une audience du Conseil de la magistrature et du résultat d'une accusation au criminel (voir dossier n° 08-031/02 du CMO). Une fois le juge suspendu, la plaignante a indiqué qu'un autre employé du tribunal lui avait fait mention d'un courriel portant sur l'accusation d'agression qui était transmis par un juge aux autres juges du même tribunal. La plaignante s'inquiétait de ce que disait précédemment le courriel sur les dangers des autres juges avec qui elle travaillait. Elle se préoccupait également de l'hostilité qu'elle ressentait de la part de certains juges et employés du tribunal en raison de sa plainte première concernant la présumée agression sexuelle.

Le sous-comité des plaintes a examiné la plainte et retenu les services d'un enquêteur pour déterminer le nom du juge qui était précédemment à l'origine du courriel en question. Le sous-comité des plaintes a ensuite demandé une réponse au juge en question et examiné cette réponse. La lettre de réponse du juge expliquait qu'il avait été préoccupé après avoir été avisé de la suspension du juge accusé. Le juge expliquait dans sa réponse que ses courriels et commentaires ultérieurs aux faits exprimaient ses préoccupations relatives aux conflits d'intérêts qui pouvaient découler du fait de continuer de travailler avec l'employée qui prétendait avoir été agressée, parce qu'il risquait d'être cité comme témoin du juge suspendu. Le sous-comité des plaintes a accepté l'explication du juge et recommandé que la plainte soit rejetée.

N° DE DOSSIER 09-025/03

Les membres du comité d'examen étaient d'avis qu'il y avait lieu de présenter d'autres demandes pour tenter d'obtenir une copie du courriel. Le comité d'examen a exigé du sous-comité qu'il communique avec le juge de paix et chef régional de l'administration et avec le juge principal régional et qu'il demande une copie du courriel. Après avoir demandé les renseignements voulus, le sous-comité des plaintes a signalé qu'on ne pouvait trouver aucune copie du courriel. Le sous-comité des plaintes a recommandé que la plainte soit rejetée. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

Le plaignant était le père biologique d'un enfant qui se trouvait sous la garde de sa mère. La mère de l'enfant vivait en union de fait avec un homme qui, selon le plaignant, avait agressé son fils. Le plaignant a présenté une demande au tribunal pour faire modifier l'ordonnance définitive qui accordait la garde à la mère. Le plaignant, qui n'était pas représenté par un avocat, n'a pas obtenu gain de cause et a allégué que le juge avait coupé court à sa présentation. Il a par ailleurs soutenu que le juge avait été impoli à son égard et lui avait manqué de respect, et qu'il avait perdu son sang-froid et refusé que le plaignant présente une preuve d'expert précisant si la police et la société d'aide à l'enfance avaient ou non suivi les méthodes d'entrevue, les politiques et les procédures appropriées aux allégations d'agressions prétendument commises par le conjoint de fait de la mère.

Le sous-comité des plaintes a étudié la plainte, puis demandé et examiné la transcription et la

échanges entre le juge et le plaignant se déroulaient à certains moments d'une voix forte et irritée. Le sous-comité des plaintes a estimé que la suggestion du juge de se récusar à l'avenir de toute affaire traitée par cet avocat était probablement la meilleure façon de régler la situation.

Le comité d'examen n'a pas souscrit à la recommandation du sous-comité des plaintes et était d'avis que la conduite inappropriée du juge justifiait le renvoi de cette plainte et de deux autres plaintes semblables (dossiers nos 07-021/01 et 09-003/03) au juge en chef de la Cour de l'Ontario. Une lettre a été envoyée au juge visé, lui demandant de reconnaître que la plainte avait un certain fondement et qu'il souscrivait à la décision de déferer cette affaire au juge en chef. Dans sa réponse, le juge a indiqué qu'à son avis, sa conduite était justifiée dans ses relations avec l'avocat et qu'il désirait que le Conseil examine ses préoccupations. Le Conseil de la magistrature a avisé le juge que son intérêt portait sur la conduite et le comportement du juge en cour, et non pas sur le message qu'il tentait de transmettre relativement au non respect des Règles de procédure en droit de la famille. Dans sa réponse, le juge a reconnu que la plainte avait un certain fondement, mais il a souligné qu'il craignait que la dernière lettre du Conseil au plaignant pouvait donner l'impression que le Conseil excusait le comportement de ce dernier.

La plainte a été déferée au juge en chef pour qu'il l'examine avec le juge visé. Dans son rapport au comité d'examen, le juge en chef a confirmé qu'il avait écouté, avec le juge, les bandes sonores des instances en plus d'avoir lu la transcription. Le juge en chef a indiqué dans son rapport que le

juge avait reconnu que sa façon d'exprimer sa frustration et son exaspération pouvait avoir été à l'origine d'une opinion erronée dans l'esprit du plaignant, et qu'il avait en bout de ligne convenu du caractère inapproprié de sa conduite. Le juge en chef s'est dit convaincu que le juge comprenait les préoccupations du Conseil et que depuis qu'il avait pris acte des plaintes, il s'efforçait d'être plus calme et de moduler sa voix au cours des audiences. Les membres du comité d'examen se sont déclarés satisfaits du rapport du juge en chef et ont accepté la recommandation visant à classer l'affaire.

N° DE DOSSIER 09-010/03

Le plaignant a été inculpé et trouvé coupable de voies de fait. Le plaignant a allégué qu'il avait été trouvé coupable en raison de la corruption de deux petites villes voisines et parce qu'il avait choisi de se représenter lui-même, ce que le tribunal désapprouvait. « J'ai prouvé au tribunal sans l'ombre d'un doute qui ne peut être contesté (sic), que je suis innocent ».

Le sous-comité des plaintes qui a enquêté sur l'affaire a examiné les lettres du plaignant et recommandé au comité d'examen que la plainte soit rejetée parce qu'elle portait sur la décision du juge et que, en l'absence de preuve d'inconduite judiciaire, elle ne relevait pas de la compétence du Conseil de la magistrature de l'Ontario. Le sous-comité des plaintes a souligné que la voie à suivre par le plaignant aurait été d'en appeler de la décision du juge. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

tion pouvait avoir été à l'origine d'une opinion erronée dans l'esprit des plaignants, et qu'il avait en bout de ligne convenu du caractère inapproprié de sa conduite. Le juge en chef s'est dit convaincu que le juge comprenait les préoccupations du Conseil et que depuis qu'il avait pris acte des plaintes, il s'efforçait d'être plus calme et de moduler sa voix au cours des audiences. Les membres du comité d'examen se sont déclarés satisfaits du rapport du juge en chef et ont accepté la recommandation visant à classer l'affaire.

N° DE DOSSIER 09-003/03

Le plaignant était avocat de l'intimé dans une affaire relevant du Tribunal de la famille. Le plaignant a soutenu que le juge visé avait été impoli et insultant tout au long de la comparution, l'interrompant à plusieurs reprises et ne lui permettant pas de présenter ses arguments. Le plaignant a par ailleurs soutenu que le juge avait suggéré à son client de le signaler au Barreau du Haut-Canada, et qu'il avait accusé le plaignant « d'avoir l'habitude de faire fi de la loi » et de ne pas remplir les documents à temps.

Le sous-comité des plaintes a examiné la plainte et demandé et obtenu une transcription et une bande sonore de l'instance. Le sous-comité des plaintes a demandé une réponse au juge en relation avec les préoccupations du plaignant. Le sous-comité des plaintes a recommandé au comité d'examen que la plainte soit rejetée. Le sous-comité des plaintes était d'avis que le juge et l'avocat (plaignant) étaient en désaccord sur l'habitude présumée du plaignant de refuser de se conformer aux Règles de procédure en droit de la famille. Le sous-comité des plaintes a souligné à l'examen des bandes sonores de l'instance que les

que le versement de la pension alimentaire au fils issu de la relation précédente.

Le sous-comité des plaintes a examiné la plainte et les transcriptions, de même que les bandes sonores de l'instance. Le sous-comité des plaintes a demandé une réponse au juge en relation avec les deux lettres de plainte. Le sous-comité des plaintes a recommandé au comité d'examen que les plaintes soient rejetées puisqu'il était d'avis que les plaintes concernaient la décision du juge et la façon dont il avait rendu son ordonnance. Le sous-comité des plaintes a souligné que le ton utilisé par le juge était moins qu'idéal à certains moments lorsqu'il expliquait le processus aux plaignants non-représentés, mais de son point de vue, cela ne constituait pas une inconduite judiciaire.

Le comité d'examen n'a pas souscrit à la recommandation du sous-comité des plaintes et était d'avis que la conduite inappropriée du juge justifiait le renvoi de cette plainte et de deux autres plaintes semblables (dossiers nos 07-021/01 et 09-003/03) au juge en chef de la Cour de l'Ontario. Lorsqu'il a décidé de déferer cette plainte au juge en chef, le comité d'examen croyait que dans la présente instance, le juge avait exprimé de l'exaspération et de la frustration exagérées, ce qui pouvait donner une impression d'autoritarisme.

La plainte a été déferée au juge en chef pour qu'il l'examine avec le juge visé. Dans son rapport adressé au comité d'examen, le juge en chef a confirmé qu'il avait écouté, avec le juge visé, les bandes sonores des instances, en plus d'avoir lu les transcriptions. Le juge en chef a indiqué dans son rapport que le juge visé avait reconnu que sa façon d'exprimer sa frustration et son exaspéra-

N° DE DOSSIER 09-002/03

Les plaignants sont un homme et son épouse, parties à une instance du Tribunal de la famille concernant l'ex-épouse de l'homme et les ententes conclues en 1998 visant la garde du fils que l'homme a eu de son premier mariage, les droits de visite à l'égard du garçon et la pension alimentaire. Des transcriptions transmises avec la lettre de plainte, il ressortait qu'une partie des ententes conclues en 1998 avait été officialisée par une ordonnance du tribunal qui accordait la garde à la mère, et mettrait fin aux obligations alimentaires du père, mais qui n'abordait pas la question des droits de visite. L'ex-épouse revenait maintenant devant les tribunaux pour que le versement d'une pension alimentaire à son fils soit rétabli.

L'intimé de cette affaire (le plaignant) s'était depuis remarié et avait eu deux autres enfants avec sa nouvelle épouse. Dans sa lettre de plainte, le père intimé indiquait que sa nouvelle épouse et lui avaient pris des décisions lourdes de conséquences pour leur famille en fonction de l'ordonnance rendue par le tribunal en 1998. Il a soutenu que le juge qui avait entendu la demande de rétablissement de la pension alimentaire présentée par l'ex-épouse n'avait pas porté attention aux faits, aux preuves et à la situation de chaque famille et qu'il avait plutôt rendu une ordonnance finale, exigeant le rétablissement du versement de la pension alimentaire, rétroactivement à la date de dépôt de la demande (juin 2002), mais pas rétroactivement à la date de cessation de la pension en 1998. La nouvelle épouse du père intimé a également déposé une plainte alléguant que le juge n'avait aucunement tenu compte des deux enfants du couple (et de leurs besoins de soins) lorsqu'il avait ordonné

fois au nom du demandeur et a soutenu que le juge l'avait vigoureusement critiqué et menacé d'incarcération s'il prenait la parole.

Le sous-comité des plaintes a examiné la plainte et demandé et examiné les transcriptions et les bandes sonores de l'instance. Après avoir examiné la documentation, le sous-comité des plaintes a recommandé que la plainte soit déferée au juge en chef. Lorsqu'il a formulé cette recommandation, le sous-comité des plaintes a indiqué que la Règle 4 (1) (c) des Règles en matière de droit de la famille autorise une partie à être représentée par un non-juriste dans des circonstances particulières, avec l'autorisation du tribunal. Le sous-comité des plaintes a souligné qu'il était par conséquent admissible que le tribunal refuse de permettre qu'un technicien juridique représente une partie, à moins que des circonstances particulières ne soient invoquées. Dans le présent cas, toutefois, les membres du sous-comité des plaintes estimaient que le juge président avait bel et bien fait preuve d'impartialité à l'égard du plaignant. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes selon laquelle cette affaire devait être déferée au juge en chef avec une autre plainte semblable (n° de dossier 09-034/03). Le juge a reçu une copie des documents relatifs à la plainte et a répondu au Conseil, reconnaissant que la plainte avait un certain fondement. La plainte a été déferée au juge en chef pour qu'il l'examine avec le juge visé. Dans son rapport au comité d'examen, le juge en chef s'est dit convaincu que le juge comprenait les préoccupations du Conseil et il a recommandé qu'aucune autre mesure ne soit prise. Les membres du comité d'examen se sont déclarés satisfaits du rapport du juge en chef et ont accepté la recommandation visant à classer l'affaire.

la Couronne. Dans sa réponse au Conseil qui désirait obtenir de plus amples renseignements, le procureur adjoint de la Couronne a confirmé qu'aucun commentaire n'avait été formulé de façon « officielle » par le juge et qu'elle s'en remettait au registre tel qu'il avait été transcrit. Après un examen plus approfondi auprès des Services judiciaires, on a découvert deux actes supplémentaires qui portaient sur la décision rendue et sur la détermination de la peine imposée relativement à la demande. Ces transcriptions et bandes sonores ont été fournies par les Services aux tribunaux et ont été déclarées complètes et exactes après une comparaison exhaustive avec les bandes sonores. Le sous-comité des plaintes a souligné que la seule mention faite par le juge au sujet de la crédibilité de la plaignante était que sa preuve était « difficile à croire », ce qui constituait un jugement de crédibilité approprié du point de vue du sous-comité des plaintes.

Le sous-comité des plaintes a recommandé que la plainte soit rejetée puisqu'elle semblait être sans fondement, mis à part les remarques attribuées au juge dans la lettre du procureur adjoint de la Couronne, et qu'aucune preuve objective n'a été présentée pour corroborer les allégations. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes visant le rejet de la plainte.

N° DE DOSSIER 08-038/03

Le plaignant est un technicien juridique que le juge avait autorisé avec hésitation à comparaître, au nom du demandeur de l'instance, à la première comparution d'une instance familiale. Le technicien juridique a comparu une deuxième

fois au tribunal. Le procureur adjoint de la Couronne avait écrit à l'Ordre des psychologues, citant six préoccupations précises relatives à la méthodologie de la plaignante/psychologue, mises en évidence dans le contre-interrogatoire de l'avocat de la défense. Le procureur adjoint de la Couronne a indiqué avoir demandé au tribunal de rejeter la demande après le témoignage de la plaignante/psychologue, puisqu'il était clair que les méthodes d'évaluation et leurs résultats étaient gravement erronés et très peu fiables. La lettre du procureur adjoint de la Couronne semblait appuyer une plainte déposée auprès de l'Ordre des psychologues par l'avocat de la défense dans cette affaire. Dans la lettre adressée par le procureur adjoint de la Couronne à l'Ordre des psychologues, il était fait mention du juge président qui avait qualifié la plaignante de « monstruosité » et avait déclaré par la suite qu'il « ne pouvait se fier à une seule de ses paroles ». Le procureur adjoint de la Couronne a indiqué que cette déclaration avait été consignée dans le registre. La plaignante/psychologue a soutenu que le juge a qui les remarques étaient attribuées l'avait abusivement et injustement calomniée.

Le sous-comité des plaintes a examiné la plainte et demandé et examiné les transcriptions et les bandes sonores de la demande. La documentation reçue initialement des Services aux tribunaux ne contenait que les transcriptions et les bandes sonores de la partie de la demande qui concernait la preuve dans la demande. Cette documentation confirmait que le juge n'avait fait aucune des déclarations qui lui étaient attribuées par le procureur adjoint de la Couronne dans sa lettre adressée à l'Ordre des psychologues. Le sous-comité des plaintes a demandé des renseignements supplémentaires au procureur adjoint de

plainte et de deux autres plaintes semblables (dossiers nos 09-002/03 et 09-003/03) au juge en chef de la Cour de l'Ontario.

La plainte a été déférée au juge en chef pour qu'il l'examine avec le juge visé. Dans son rapport au comité d'examen, le juge en chef a confirmé qu'il avait écouté, avec le juge, les bandes sonores des instances des trois dossiers en plus d'avoir lu les transcriptions. Le juge en chef a indiqué dans son rapport au Conseil que le juge avait convenu que sa façon d'exprimer sa frustration et son exaspération pouvait avoir été à l'origine d'une opinion erronée dans l'esprit du plaignant et de son épouse, et qu'il avait en bout de ligne convenu du caractère inapproprié de sa conduite. Le juge en chef s'est dit convaincu que le juge comprenait les préoccupations du Conseil et que depuis qu'il avait pris acte des plaintes, il s'efforçait d'être plus calme et de moduler sa voix au cours des audiences. Les membres du comité d'examen se sont déclarés satisfaits du rapport du juge en chef et ont accepté la recommandation visant à classer l'affaire.

N° DE DOSSIER 08-016/02

La plaignante est une psychologue citée à comparaître à titre de témoin expert par la Couronne dans le cadre d'une demande de déclaration de délinquant dangereux soumise au tribunal par le bureau du procureur de la Couronne. La personne visée par la demande avait été soumise à diverses analyses et évaluations psychologiques menées par la plaignante/psychologue. La plaignante a remis au CMO une copie de la lettre adressée à l'Ordre des psychologues par la procureure adjointe de la Couronne qui avait soumis la demande de déclaration de délinquant dan-

Le plaignant a indiqué qu'il avait accompagné son épouse lors de comparutions devant le tribunal relativement à la garde du fils issu de son union avec son ex-époux, au droit de visite à l'égard de l'enfant et de la pension alimentaire à lui verser. Le plaignant a soutenu que le juge qui présidait l'instance judiciaire familiale de son épouse, « avait de façon répétée malmené et menacé son épouse, tenu des propos diffamatoires à son égard et déclaré qu'elle était coupable de gestes qu'elle n'avait pas posés ». Le plaignant indique avoir eu la même impression du juge à chaque occasion que son épouse a dû comparaître devant le tribunal.

N° DE DOSSIER 07-021/01

Après avoir lu la transcription et écouté les bandes sonores des différentes instances, le sous-comité des plaintes a demandé une réponse au juge. Ce dernier, dans sa réponse, a indiqué qu'il regrettait « l'intensité » avec laquelle il s'était adressé à l'épouse du plaignant, intensité qui découlait de sa volonté de lui faire comprendre la gravité de ses actions et les conséquences possibles du non-respect des ordonnances du tribunal concernant le droit de visite (p. ex., elle pourrait être incarcérée). Le juge s'est aussi excusé sincèrement auprès du plaignant qui estimait son comportement blessant.

Le sous-comité des plaintes a recommandé que la plainte soit rejetée. À son avis, le ton de voix adopté par le juge ainsi que certaines de ses interactions avec l'épouse du plaignant étaient inappropriées, mais ne constituaient pas une inconvénience judiciaire. Le comité d'examen n'a pas souscrit à la recommandation du sous-comité des plaintes et était d'avis que la conduite inappropriée du juge justifiait le renvoi de cette

manque d'impartialité, un conflit d'intérêt ou toute autre forme de parti pris. Un sous-comité des plaintes a enquêté sur les allégations figurant dans chacun de ces dossiers et a jugé que celles-ci étaient non fondées.

Les 13 autres dossiers classés au cours de la dixième année ont été classés sans avoir été rejetés. Sept (7) de ces dossiers ont été renvoyés au juge en chef de la Cour de justice de l'Ontario Brian W. Lennox, afin qu'il s'entretienne avec les trois juges concernés (dossiers n° 07-021/01, 08-038/03, 09-002/03, 09-003/03, 09-027/03, 09-034/03 et 09-046/04). Un autre dossier a été renvoyé à la juge en chef de la Cour supérieure de justice Heather Smith (dossier n° 09-026/03). Deux dossiers ont été classés lorsqu'on a conclu que les affaires se trouvaient toujours devant les tribunaux et que les dossiers avaient été ouverts trop tôt (dossiers n° 10-022/04 et 10-026/05), et les trois autres dossiers ont fait l'objet soit d'une audience, soit d'une ordonnance d'audience. Deux de ces trois dossiers portaient sur des affaires qui avaient été reportées d'années antérieures et dont l'audience a eu lieu au cours de la dixième année (dossiers n° 08-024/02 et 08-031/02). Pour ce qui est du dernier dossier, le juge concerné a démissionné après que le CMO a rendu une ordonnance d'audience, puis le dossier a été classé, car il n'était plus du champ de compétence du Conseil (dossier n° 09-053/04).

10. Résumé des dossiers

Dans tous les dossiers classés durant l'année, l'avis de la décision du Conseil de la magistrature, motifs à l'appui, a été remis au plaignant et au juge visé, conformément aux instructions du juge sur l'avis (se reporter à la page B-26 de l'annexe B du Guide des procédures du CMO).

Chaque dossier reçoit un numéro constitué d'un préfixe de deux chiffres indiquant l'année d'activités du Conseil au cours de laquelle il a été ouvert. Ce préfixe est suivi d'un numéro de dossier séquentiel et d'un nombre de deux chiffres indiquant l'année civile au cours de laquelle le dossier a été ouvert (par exemple, n° 10-035/04 était le 14e dossier ouvert au cours de la dixième année d'activités et il a été ouvert au cours de l'année civile 2004).

On trouvera ci-après une description détaillée de chaque plainte. Les renseignements signalétiques ont été supprimés.



Le comité d'examen ou un comité d'audience peut, lorsqu'une audience est tenue relativement à une plainte, examiner la question de l'indemnisation du juge pour les frais qu'il a engagés au titre des services juridiques nécessaires à une enquête ou à une audience. Le Conseil peut ordonner l'indemnisation du juge pour le coût de ces services juridiques (en se fondant sur un tarif qui ne dépasse pas le taux maximal normalement payé par le gouvernement de l'Ontario pour des services similaires) et le procureur général doit verser l'indemnité au juge si cette mesure est recommandée.

On trouvera à l'annexe D du présent rapport une copie des dispositions législatives de la Loi sur les tribunaux judiciaires concernant le Conseil de la magistrature de l'Ontario.

9. Résumé des plaintes

Au cours de sa dixième année d'activités, le Conseil de la magistrature de l'Ontario a reçu 36 plaintes, en plus des 35 dossiers de plaintes reportés des années précédentes. Sur ces 71 plaintes, 52 ont été réglées avant le 31 mars 2004, ce qui laisse 19 dossiers de plaintes qui seront reportés à la onzième année d'activités. Le Conseil a manqué de temps pour terminer l'enquête relative aux quatre dossiers ouverts vers la fin de 2004 et le début de 2005 et ainsi respecter le délai avant la tenue de la dernière réunion du Conseil de la dixième année, le 11 février 2005. En outre, deux dossiers ayant fait l'objet d'une ordonnance d'audience publique ont été reportés à la onzième année en raison de l'impossibilité de fixer des dates d'audience pendant la dixième année.

Dix-sept (17) des 39 dossiers de plaintes rejetés par le Conseil de la magistrature de l'Ontario au cours de la période couverte par le présent rapport étaient hors du champ de compétence du Conseil. Ces dossiers concernaient généralement un plaignant ayant exprimé son insatisfaction à l'égard du résultat d'un procès ou de la décision d'un juge, sans toutefois formuler une allévation d'inconduite. Dans ces cas, bien que les décisions rendues par le juge puissent faire l'objet d'un appel, l'absence d'allévation d'inconduite signifiait que les plaintes étaient hors du champ de compétence du Conseil de la magistrature.

Des 39 dossiers de plaintes rejetés par le CMO, 22 présentaient des allévisions de comportement inapproprié, comme une attitude grossière ou agressive, un

ANNÉE D'ACTIVITÉS		Ouverts durant l'exercice		Reportés de l'exercice précédent		Total des dossiers ouverts durant l'exercice		Classés durant l'exercice		En instance à la fin de l'exercice	
00/01	01/02	55	52	52	44	107	96	63	63	44	33
02/03	03/04	49	33	34	55	82	89	48	54	35	34
04/05		36	35	71	52					19	

Le Conseil (ou un comité d'examen établi par celui-ci) examine toutes les solutions recommandées à une plainte déposée par le sous-comité des plaintes et peut approuver une solution ou remplacer toute décision du sous-comité des plaintes si le Conseil (ou le comité d'examen) décide que la décision n'est pas appropriée. Si le sous-comité de plaintes renvoie une plainte au Conseil, celui-ci (ou un comité d'examen établi par celui-ci) peut rejeter la plainte, la renvoyer au juge en chef de la Cour de justice de l'Ontario ou à un médiateur, ou ordonner la tenue d'une audience relative à la plainte. Les comités d'examen sont composés de deux juges provinciaux (autres que le juge en chef de la Cour de justice de l'Ontario), d'un avocat et d'un membre non juriste. À cette étape de la procédure, seuls les deux membres du sous-comité des plaintes connaissent l'identité du plaignant ou du juge qui fait l'objet de la plainte.

Les membres du sous-comité des plaintes qui ont participé à la sélection préalable de la plainte ne participent pas à son examen par le Conseil ni à aucune audience subséquente portant sur cette plainte. De la même façon, les membres du comité d'examen qui ont participé à l'examen d'une plainte ou à son renvoi ne participent pas à l'audition de la plainte, au cas où une audience est ordonnée.

À la fin du processus d'enquête et d'examen, toutes les décisions relatives aux plaintes soumises au Conseil de la magistrature auront été examinées par un total de six membres du Conseil : deux membres du sous-comité des plaintes et quatre membres du comité d'examen. Des dispositions relatives à la nomination de membres temporaires ont été prises pour veiller à ce qu'une majorité des membres du Conseil puissent tenir une audience sur une plainte si une telle audience a été ordonnée. Les comités d'audience doivent être composés d'au moins deux des six autres membres du Conseil qui n'ont pas participé au processus jusqu'à cette étape. Au moins un membre du comité d'audience doit être non juriste, et le juge en chef de la Cour de justice de l'Ontario, ou son suppléant de la Cour d'appel, doit présider le comité d'audience.

Les audiences tenues relativement à des plaintes sont publiques à moins que le Conseil ne détermine, conformément aux critères établis en vertu de l'alinéa 51.1(1) de

la Loi sur les tribunaux judiciaires, que des circonstances exceptionnelles existent et que les avantages du maintien du caractère confidentiel prévalent sur ceux de la tenue d'une audience publique, auquel cas le Conseil peut tenir une partie ou la totalité de l'audience à huis clos. Il n'est pas obligatoire que les instances autres que les audiences tenues pour examiner les plaintes portées contre certains juges soient publiques. L'identité d'un juge, après une audience à huis clos, n'est divulguée que dans des circonstances exceptionnelles déterminées par le Conseil. Dans certaines circonstances, le Conseil est aussi habilité à interdire la publication de renseignements susceptibles de divulguer l'identité d'un plaignant ou d'un juge. La Loi sur l'exercice des compétences légales, sauf certaines exceptions, s'applique aux audiences tenues relativement à des plaintes.

Après la tenue d'une audience, le comité d'audience du Conseil peut rejeter la plainte (qu'il ait conclu ou non que la plainte n'est pas fondée) ou, s'il conclut qu'il y a eu inconduite de la part d'un juge, il peut imposer une ou plusieurs sanctions, ou recommander au procureur général la destitution du juge.

- ◆ donner un avertissement au juge;
- ◆ réprimander le juge;
- ◆ ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;
- ◆ ordonner que le juge prenne des dispositions précises, par exemple, suivre une formation ou un traitement, pour pouvoir continuer de siéger à titre de juge;
- ◆ suspendre le juge, avec rémunération, pour une période indéterminée;
- ◆ suspendre le juge, sans rémunération, mais avec avantages sociaux, pendant une période maximale de trente jours.

Le conseil peut également recommander au procureur général la destitution du juge. Cette dernière sanction ne peut être combinée avec aucune autre.

4. Plan de formation

Le juge en chef de la Cour de justice de l'Ontario est tenu, en vertu du paragraphe 51.10 de la Loi sur les tribunaux judiciaires, de mettre en œuvre et de rendre public le plan de formation judiciaire continue des juges provinciaux. Ce plan de formation doit être approuvé par le Conseil de la magistrature comme il est prévu à l'alinéa 51.10 (1) de la loi. Au cours de la période couverte par le présent rapport annuel, un plan de formation continue a été élaboré par le juge en chef, en collaboration avec le secrétariat à la formation, et approuvé par le Conseil de la magistrature. On trouvera à l'annexe C une copie du plan de formation continue pour 2003-2004.

5. Principes de déontologie judiciaire

Le juge en chef de la Cour de justice de l'Ontario et la Conférence des juges de l'Ontario ont proposé au Conseil de la magistrature de l'Ontario d'intégrer les principes du texte du Conseil canadien de la magistrature intitulé « Principes de déontologie judiciaire » aux normes déontologiques régissant la conduite des juges de la Cour de justice de l'Ontario. Le 11 février 2005, les membres du Conseil de la magistrature de l'Ontario ont convenu à l'unanimité de l'adoption de ce document. On peut en trouver une copie à l'annexe E du présent document.

6. Communications

Le site Web du Conseil de la magistrature de l'Ontario continue de fournir de l'information sur le Conseil ainsi que des renseignements sur les audiences à venir. Une copie des motifs des jugements est affichée sur le site Web des que ceux-ci sont rendus publics tout comme le plus récent rapport annuel accessible au public est présenté dans sa version intégrale.

L'adresse du site Web du CMO est : www.ontariocourts.on.ca/

7. Comité consultatif sur les nominations à la magistrature

Depuis la promulgation des modifications à la Loi sur les tribunaux judiciaires en février 1995, le Conseil de la magistrature ne s'occupe plus directement de la nomination des juges provinciaux. Toutefois, le Conseil est représenté par l'un de ses membres au Comité consultatif sur les nominations à la magistrature (CCNM) à l'échelle provinciale. Madame la juge Maryoh Agro a été nommée par le CMO pour le représenter au sein du CCNM.

8. Procédure d'instruction des plaintes

Un sous-comité des plaintes, formé de membres du Conseil de la magistrature et qui comprend toujours un officier de justice nommé par l'autorité provinciale (un juge autre que le juge en chef de la Cour de justice de l'Ontario ou un protonotaire) et un membre non juriste, examine toutes les plaintes dont le Conseil est saisi. La loi applicable autorise le sous-comité des plaintes à rejeter les plaintes qui sont hors du champ de compétence du Conseil (à savoir, les plaintes portées contre les juges fédéraux, les questions susceptibles d'appel, etc.) ou qui, de l'opinion du sous-comité des plaintes, sont frivoles ou constituent un abus de procédure. Le sous-comité des plaintes fait une enquête plus poussée sur toutes les autres plaintes. On trouvera à l'annexe B une description plus détaillée des procédures du Conseil de la magistrature.

Une fois l'enquête terminée, le sous-comité des plaintes peut recommander le rejet de la plainte, son renvoi devant le juge en chef de la Cour de justice de l'Ontario pour un règlement à l'amiable, son renvoi à la médiation ou encore sa présentation au Conseil de la magistrature avec ou sans recommandation de tenir une audience. La décision du sous-comité des plaintes doit être unanime. Si les membres du sous-comité des plaintes ne peuvent pas se mettre d'accord, le sous-comité des plaintes renvoie la plainte au Conseil qui décide des mesures à prendre.

Le Conseil peut établir un mécanisme de médiation, et seules les plaintes qui s'y prêtent (compte tenu de la nature des allégations) peuvent être renvoyées à la médiation. Le Conseil doit élaborer des critères pour déterminer quelles plaintes peuvent être renvoyées à la médiation.

Membres de la collectivité

MARLENE ALDRIDGE (Toronto)
Enseignante, CSD catholique de Toronto
(à compter du 14 octobre 2004)

JOCELYNE COTÉ-O'HARA (Toronto)
Présidente, groupe CORA

PAUL HAMMOND (Brucville)
Président et directeur général, Muskoka Transport Ltd.
(jusqu'au 30 juin 2004)

WILLIAM JAMES (Toronto)
Président, Inmet Mining
(jusqu'au 21 mars 2005)

HENRY WETELAINEN (Wabigoon)
Ontario Métis Aboriginal Association
(jusqu'au 1^{er} mars 2005)

Membres temporaires

Les articles 87 et 87.1 de la Loi sur les tribunaux judiciaires habilitent le Conseil de la magistrature de l'Ontario à statuer sur les plaintes portées contre toute personne d'un proto-notaire de la Cour suprême avant le 1^{er} septembre 1990 et contre tout juge provincial qui était affecté à la Cour provinciale (Division civile) avant le 1^{er} septembre 1990. Lorsque le Conseil de la magistrature de l'Ontario instruit une plainte portée contre un proto-notaire ou un juge de l'ancienne Division civile, le juge qui est membre du sous-comité des plaintes est remplacé par un membre temporaire nommé par le juge en chef de la Cour supérieure de justice. Il peut s'agir, selon le cas, d'un proto-notaire ou d'un juge provincial qui siège à la Cour des petites créances.

Durant la période couverte par le présent rapport, les personnes suivantes ont été nommées membres temporaires du conseil de la magistrature de l'Ontario pour traiter les plaintes portées contre des juges et proto-notaires nommés par l'autorité provinciale :

PROTONOTAIRES

JUGES

- Basil T. Clark, c.r.
- R. B. Linton, c.r.
- R. B. Peterson
- Monsieur le juge M.D. Godfrey
- Madame la juge Pamela Thomson

3. Renseignements administratifs

Monsieur le juge Bernard M. Kelly
Monsieur le juge Claude H. Paris

Conseil de la magistrature de l'Ontario :

Le paragraphe 49 (3) de la Loi sur les tribunaux judiciaires autorise le juge en chef de la Cour de justice de l'Ontario à nommer un juge provincial à titre de membre temporaire du Conseil de la magistrature de l'Ontario pour satisfaire aux exigences législatives en matière de quorum pour les réunions, les comités d'examen et les comités d'audience du Conseil de la magistrature. Les juges suivants de la Cour de justice de l'Ontario ont été nommés par le juge en chef pour servir au besoin de membres temporaires du Conseil de la magistrature de l'Ontario :

VALERIE P. SHARP LL.B. – Greffière

THOMAS GLASSFORD – Greffier adjoint

(en congé parental du 16 août au 13 décembre 2004)

JANICE C. CHEONG – Secrétaire

de l'année) et d'une secrétaire :

Au cours de la huitième année d'activités du Conseil, le personnel du Conseil de la magistrature de l'Ontario et du Conseil d'évaluation des juges de paix était composé d'une greffière, d'un greffier adjoint (pendant une partie

des personnes qui se servent d'un télescripteur.

Les locaux des conseils servent principalement aux réunions des deux conseils et de leurs membres. Chaque conseil a ses propres numéros de téléphone et de télécopieur et ses propres articles de papeterie. Par ailleurs, chaque conseil a un numéro sans frais réservé à l'usage public à l'échelle de l'Ontario et un numéro sans frais à l'intention des personnes qui se servent d'un télescripteur.

sonnel de soutien d'envergure.

Des locaux séparés adjacents au bureau du juge en chef, au centre-ville de Toronto, sont utilisés à la fois par le Conseil de la magistrature de l'Ontario et par le Conseil d'évaluation des juges de paix. La proximité entre le bureau du Conseil et celui du juge en chef permet à ces deux conseils de partager, selon les besoins, le personnel du bureau et d'administration ainsi que les services informatiques et de soutien, sans avoir à se doter d'un personnel de soutien d'envergure.

1. Composition et modalités de nomination

Le Conseil de la magistrature de l'Ontario est constitué des membres suivants :

- ◆ le juge en chef de l'Ontario (ou un juge de la Cour d'appel désigné par le juge en chef);
- ◆ le juge en chef de la Cour de justice de l'Ontario (ou un autre juge de cette cour désigné par le juge en chef);
- ◆ le juge en chef adjoint de la Cour de justice de l'Ontario;

- ◆ un juge principal régional de la Cour de justice de l'Ontario nommé par le lieutenant-gouverneur en conseil sur la recommandation du procureur général;

- ◆ deux juges de la Cour de justice de l'Ontario nommés par le juge en chef de cette cour;
- ◆ le trésorier du Barreau du Haut-Canada ou un autre conseiller du Barreau qui est un avocat, désigné par le trésorier;
- ◆ un avocat qui n'est pas conseiller du Barreau du Haut-Canada, nommé par le Barreau;

- ◆ quatre personnes qui ne sont ni juges ni avocats, nommées par le lieutenant-gouverneur en conseil sur la recommandation du procureur général.

Le juge en chef de l'Ontario préside toutes les instances concernant des plaintes portées contre des juges particuliers, sauf les réunions du comité d'examen qui sont présidées par un juge provincial désigné par le Conseil de la magistrature. Le juge en chef de l'Ontario préside aussi les réunions tenues pour examiner les demandes relatives aux besoins d'un juge en raison d'une invalidité ou pour examiner le maintien en fonction d'un juge en chef ou d'un juge en chef adjoint. Le juge en chef de la Cour de justice de l'Ontario préside toutes les autres réunions du Conseil de la magistrature.

2. Membres titulaires

Durant sa dixième année d'activités (soit du 1^{er} avril 2004 au 31 mars 2005), le Conseil de la magistrature de l'Ontario était composé des membres suivants :

Membres de la magistrature

JUGE EN CHEF DE L'ONTARIO
R. Roy McMurtry (Toronto)

JUGE EN CHEF DE LA COUR DE JUSTICE DE L'ONTARIO
Brian W. Lennox (Ottawa/Toronto)

JUGE EN CHEF ADJOINT DE LA COUR DE JUSTICE DE L'ONTARIO
J. David Wake (Toronto)

JUGE PRINCIPAL RÉGIONAL
Raymond F. Taillon (Lindsay)
(jusqu'au 1^{er} septembre 2004)

JUGE PRINCIPAL RÉGIONAL
G. Normand Glade (Sudbury)
(à compter du 12 janvier 2005)

DEUX JUGES NOMMÉS PAR LE JUGE EN CHEF DE LA COUR DE JUSTICE DE L'ONTARIO
Madame la juge Marjoh Agre (Milton)

Madame la juge Deborah Livingstone (London)
Membres avocats

TRÉSORIER DU BARREAU DU HAUT-CANADA
Frank Marrocco, c.r. (Toronto)
AVOCAT DÉSIGNÉ PAR LE TRÉSORIER DU BARREAU DU HAUT-CANADA
Julian Porter, c.r. (Toronto)
AVOCATE DÉSIGNÉE PAR LE BARREAU DU HAUT-CANADA
Patricia D. S. Jackson (Toronto)

DIXIÈME RAPPORT ANNUEL DU CONSEIL DE LA MAGISTRATURE DE L'ONTARIO 2004 – 2005

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INTRODUCTION

La période couverte par le présent rapport s'étend du 1^{er} avril 2004 au 31 mars 2005.

Le Conseil de la magistrature de l'Ontario enquête sur les plaintes dont il est saisi par le public contre les juges et proto-notaires provinciaux. En outre, il approuve annuellement le plan de formation des juges provinciaux et a approuvé les critères de maintien en fonction et les normes de conduite élaborées par le juge en chef de la Cour de justice de l'Ontario. Le Conseil de la magistrature peut aussi rendre une ordonnance pour tenir compte des besoins d'un juge qui, en raison d'une invalidité, est incapable d'exercer les fonctions de sa charge. Une telle ordonnance peut être rendue par suite d'une plainte (si l'invalidité était un facteur dans la plainte) ou à la demande du juge en question. Bien que le Conseil de la magistrature ne s'occupe pas directement de la nomination des juges provinciaux, il est représenté par l'un de ses membres au sein du Comité consultatif sur les nominations à la magistrature provinciale.

Durant la période couverte par le présent rapport annuel, le Conseil de la magistrature de l'Ontario exerçait sa compétence sur environ 275 juges et proto-notaires provinciaux nommés par la province.



CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

Le 31 mars 2006

L'honorable Michael Bryant
Procureur général de l'Ontario
720, rue Bay, 1^{er} étage
Toronto (Ontario)
M5G 2K1

Monsieur le procureur général,

Nous avons le plaisir de vous présenter le rapport annuel de la dixième année d'activités du Conseil de la magistrature de l'Ontario, conformément au paragraphe 51 (6) de la Loi sur les tribunaux judiciaires. La période couverte par le présent rapport s'étend du 1^{er} avril 2004 au 31 mars 2005.

Veuillez agréer, Monsieur le procureur général, l'expression de nos sentiments respectueux.

R. Roy McMurtry
Juge en chef de l'Ontario

Brian W. Lennox
Juge en chef
Cour de justice de l'Ontario



Brian W. Lennox

LE JUGE EN CHEF

COUR DE JUSTICE DE L'ONTARIO

Coprésident, Conseil de la magistrature de l'Ontario



Roy R. McMurtry

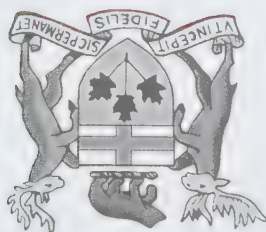
JUGE EN CHEF DE L'ONTARIO

Coprésident, Conseil de la magistrature de l'Ontario

CONSEIL DE LA MAGISTRATURE
DE L'ONTARIO

2004 – 2005

DIXIÈME
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